TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 160.

A. A. TRUSKETT AND W. O. TRUSKETT, APPELLANTS,

vs.

FRED D. CLOSSER.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED MAY 1, 1915.

(25,062)

(23,662)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 160.

A. A. TRUSKETT AND W. O. TRUSKETT, APPELLANTS,

vs.

FRED D. CLOSSER.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Original.	Print
Caption	*a*	1
Transcript from the district court of the United States for the eastern district of Oklahoma	1	1
Caption	1	1
Complaint	1	1
Exhibit "No. 1"—Patent to surplus allotment of Robert F. Goodman	10	9
"No. 2"—Patent to homestead allotment of Robert F. Goodman	11	10
"No. 3"—Application of Robert F. Goodman to confer rights of majority, filed in court below	12	11
"A"—*In re* application of Robert F. Goodman for rights of majority (affidavit of publication)	14	12
"No. 4"—*In re* application of Robert F. Goodman for rights of majority (journal entry)	15	13
"No. 5"—Oil and gas mining lease from Robert F. Goodman to F. E. Overfield	16	14

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 7, 1914.

	Original.	Print
Exhibit "No. 6"—Warranty deed from Robert F. Goodman to James D. Canary.....	19	17
"No. 7"—Oil and gas mining lease from Hugh Branson, as guardian of Robert F. Goodman, to William W. Lantz...	21	19
"No. 8"—Oil and gas mining lease from Hugh Branson, guardian of Robert F. Goodman, to Fred D. Closser.....	27	24
Joint and several demurrer of A. A. Truskett and W. O. Truskett	30	26
Order overruling demurrer to petition and permitting defendants to plead.....	32	28
Decree	32	28
Assignment of errors.....	34	30
Cost bond	37	32
Praecipe for record, with acceptance of service.....	38	33
Certificate of clerk.....	39	34
Appearances	40	34
Order of submission.....	41	35
Opinion, Willard, J.....	42	36
Decree	49	41
Petition for appeal.....	49	42
Assignment of errors.....	50	43
Affidavit as to amount in controversy.....	52	45
Bond on appeal.....	53	45
Order allowing appeal.....	55	47
Citation and service.....	56	47
Clerk's certificate	58	48

a Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September Term, 1912, of said Court, before the Honorable Walter H. Sanborn and the Honorable William C. Hook, Circuit Judges, and the Honorable Charles A. Willard, District Judge.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the seventh day of March, A. D. 1912, a transcript of record, pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Oklahoma, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein A. A. Truskett and W. O. Truskett are Appellants and Fred D. Closser is Appellee, which said transcript as prepared, printed and certified by the Clerk of said District Court in pursuance of an Act of Congress approved February 13, 1911, is in the words and figures following, to-wit:

1 In the United States District Court, Eastern District of Oklahoma.

Pleas and Proceedings before the Honorable Ralph E. Campbell, Judge of the District Court of the United States for the Eastern District of Oklahoma, presiding in the following entitled cause:

In Equity. No. 1456.

FRED. D. CLOSSER, a Citizen and Resident of the State of Ohio, Plaintiff,

vs.

JAMES D. CANARY, a Citizen and Resident of the State of Oklahoma, and W. O. Truskett and A. A. Truskett, Both Citizens and Residents of the State of Kansas, Defendants.

To the Honorable the Judges of the Circuit Court of the United States in and for the Eastern District of Oklahoma:

Fred D. Closser, a citizen of the state of Ohio, brings this, his bill of complaint, against James D. Canary, a citizen of the state of Oklahoma and a resident of the state of Kansas, and W. O. Truskett and A. A. Truskett, both citizens and residents of the state of Kansas; and thereupon

Your orator complains and says:

First. That he now is and, during all the times hereinafter mentioned, was a citizen and resident of the state of Ohio.

Second. That James D. Canary, one of the respondents, now is and, during all the times hereinafter mentioned, was citizen of the state of Oklahoma and a resident of the state of Kansas; that W. O. Truskett and A. A. Truskett, the other respondents, now are and, during all the times hereinafter mentioned, were citizens and residents of the state of Kansas.

2 Third. That Robert F. Goodman is a male Cherokee Indian of one-eighth Indian blood and seven-eighths white blood, and is now a minor but will arrive at the age of twenty-one years on September 25, 1910.

Fourth. That heretofore, to-wit, on March 31, 1909, the said Goodman became the sole and absolute owner in fee simple of fifty acres of land in Washington County, Oklahoma, and being the east half of the northeast quarter of the southwest quarter of section twenty-six, and the southwest quarter of the southeast quarter of the northeast quarter and the north half of the northeast quarter of the southeast quarter of section twenty-seven, all in township twenty-nine north, range thirteen east, the same have been conveyed to him by written indenture of deed dated March 31, 1909, and recorded in the office for recording deeds in said Washington County. A copy of which deed is hereto attached, marked "Exhibit No. 1" and made a part hereof as fully as though incorporated at length herein; that heretofore, to-wit, on March 31, 1909, the said Goodman became the sole and absolute owner in fee simple of thirty acres of land in Washington County, Oklahoma, and being the north half of the southeast quarter of the northeast quarter and the southeast quarter of the southeast quarter of the northeast quarter of section twenty-seven in township twenty-nine north and range thirteen east, the same having been conveyed to him by written indenture of deed dated March 31, 1909, and recorded in the office for recording deeds in said Washington County. A copy of the said deed is hereto attached, marked "Exhibit No. 2" and made a part hereof as fully as though incorporated at length herein. The said eighty acres were allotted to the said Goodman as a member of the Cherokee Tribe or Indian Nation and are a part of the land previously owned by the tribe or nation in common. The said eighty acres will be hereinafter referred to as his "eighty acre allotment."

Fifth. That heretofore, to-wit, on October 12, 1909, there was presented to the presiding judge of the District Court of Washington County, Oklahoma, a petition purporting to be that of the said Robert F. Goodman and to be drawn, signed and presented by his next friend and mother C. B. Goodman, wherein and whereby it was alleged that the said Robert F. Goodman was over the age of nineteen years and seven months and a resident of said Washington County, Oklahoma, for more than one year and the owner of an allotment of eighty acres in the said county, the greater por-

3 tion of which was in cultivation and that there was no house or other necessary buildings thereon; and alleging further that the guardian of the minor had about one thousand six hundred dollars in his possession belonging to the minor, who desired

to have the rights of majority conferred upon him so that he could use the said money in building [an] house and barn and to make other improvements upon the said allotment in order to make the said habitable for himself or tenant; and alleging further that due notice of the filing of the said petition and application had been given as required by law, by the publication of a notice in the Bartlesville Weekly Examiner, a newspaper printed and published in Washington County, Oklahoma, and alleging further that a copy of such notice with affidavit of its publication, was attached to such petition and marked "Exhibit A" and made a part thereof; that the prayer of the said petition was that the rights of majority concerning contracts be conferred upon the said minor and that he be authorized and empowered to do and transact business in general, with the same force and effect as if such business were done and transacted by a person over the age of twenty-one years. A true and correct copy of the said petition with all its exhibits is hereto attached, marked "Exhibit No. 3" and made a part hereof as fully as though incorporated at length herein.

Sixth. That upon the presentation of the said petition the presiding judge of the said District Court entered an order in which he attempted to grant the prayer thereof and to confer upon the said minor the rights of majority concerning contracts and authorizing and empowering him to transact business in general, with the same force and effect as if such business were transacted by a person over the age of twenty-one years. A true and correct copy of the journal entry wherein and whereby such prayer was attempted to be granted and such authority and power conferred is hereto attached, marked "Exhibit No. 4" and made a part hereof as fully as though incorporated at length herein.

Seventh. That immediately after the above stated attempt to grant the prayer of the said petition, to-wit, on and under date of October 20, 1909, the said Robert F. Goodman attempted to demise, lease and let unto F. E. Overfield his said allotment of eighty acres situate in Washington County, Oklahoma and being the southeast quarter of the northeast quarter and the north half of the northeast quarter of the southeast quarter of section twenty-seven, and the east half of the northeast quarter of the southwest quarter of section twenty-six, all in Township twenty-nine north, in range thirteen east, for a term of fifteen years and so long thereafter as oil or gas is found in said premises in paying quantities. A true and correct copy of the said written lease whereby he attempted so to do is hereto attached, marked "Exhibit No. 5" and made a part hereof as fully as though incorporated at length herein.

4

Eighth. That afterwards and prior to this date the said pretended lease was duly assigned and transferred to and is now wholly owned by W. O. Truskett and A. A. Truskett, two of the above respondents, who now claim the exclusive right by virtue thereof to enter upon the said eighty acre allotment and take possession thereof and drill and operate the same for oil and gas.

Ninth. That afterwards, to-wit, on and under date of December 14, 1909, the said Robert F. Goodman, by written indenture of deed,

attempted to sell and convey unto James D. Canary, another of the above respondents, the fee of the said eighty acre allotment, who now claims to be the owner thereof and to have the right to demand all rentals due or accruing under the said pretended lease and the exclusive right, for all purposes other than drilling and operating for oil and gas, to enter upon and take possession of the said eighty acre allotment, among which is the right to eject your orator therefrom. A true and correct copy of the said pretended written indenture of deed is hereto attached, marked "Exhibit No. 6" and made a part hereof as fully as though incorporated at length herein.

Tenth. That on and under date of — upon petition duly presented and granted, Hugh Branson was by the County Court in and for Nowata County, Oklahoma, duly appointed guardian of the said Robert F. Goodman, and duly qualified as such and entered upon the duties of his appointment, and ever since has been, and now is, acting as such, and as such guardian he did, on August 28th, 1906, by written indenture of lease bearing that date, demise, lease and let unto William Lantz of Independence, Kansas, the said eighty-acre allotment, which lease, by its terms, expires on and with September 24, 1910. A copy of the said lease is hereto attached, marked "Exhibit No. 7," and made a part hereof as fully as though incorporated at length herein.

Eleventh. That under and by virtue of the said lease, "Exhibit No. 7," there has been drilled upon the said eighty-acre allotment Two (2) gas wells, which are now producing gas in paying quantities.

5 Twelfth. That therefore, to-wit, on September 14, 1910, the said guardian of Robert F. Goodman, did petition the judge of the County Court of Nowata County, Oklahoma, the court having authority and jurisdiction over the accounts, moneys and property of the said guardian, and of the said Robert F. Goodman, asking the said court for permission to demise, lease and let the said eighty-acre allotment unto your orator for oil and gas mining purposes; that upon the presentation of the said petition, and after due consideration thereof, and being satisfied of the advisability thereof, the said court did grant the prayer thereof and did order, direct and decree such a lease to be made; that thereupon the said guardian did, by written indenture of lease, demise, lease and let the said eighty-acre allotment unto your orator for a term of thirty days, and as long thereafter as oil and gas are found in paying quantities. A copy of such lease is hereto attached, marked "Exhibit No. 8," and made a part hereof as fully as though incorporated at length herein.

Thirteenth. That your orator, by virtue of the said lease, "Exhibit No. 8," has entered upon and is now in possession of the said eighty-acre allotment, and immediately upon the expiration of the present lease thereon, "Exhibit No. 7," is prepared to and will operate the said allotment and the wells drilled thereon for oil and gas.

Fourteenth. That your orator is informed, and believes, and hence avers and states the fact to be, that the said defendants, immediately upon the expiration of the present lease, "Exhibit No. 7," and claiming the rights to do under and by virtue of the said pretended lease,

"Exhibit No. 5," and the said pretended deed, "Exhibit No. 6," and in gross violation of your orator's rights in the premises propose to and will take physical and forcible possession of the said eighty-acre allotment, ejecting your orator therefrom and depriving him of the fruits and profits of his said lease, "Exhibit No. 6," and his legal rights in and to the said allotment and the operation of the same and the wells thereon for oil and gas.

Fifteenth. That, by an Act duly approved by the President on May 27, 1908, entitled, "An Act for the Removal of Restrictions From Part of the Lands of Allottees of the Five Civilized Tribes, and for Other Purposes," and being Chapter 199, and 35 Statutes at Large 312, the Congress of these United States did remove restrictions against alienation and incumbrance from Indians of the Five Civilized Tribes of less than half Indian blood, of which five
6 tribes the Cherokee Tribe of Indians is one, but did further enact and provide that all male Indians should remain minors until they arrive at the age of twenty-one years, and all female Indians should remain minors until they arrive at the age of eighteen years.

Sixteenth. That your orator's rights in the premises, and in the operation of the said lease and the wells drilled or to be drilled thereon, are of great value, to-wit, over ten thousand dollars, and if he be interfered with in the possession and enjoyment of the said lease and wells by the respondents herein, they will cause your orator great and irreparable pecuniary loss, damage and injury, and that the amount of such direct loss, damage and injury to your orator will be more than two thousand dollars, exclusive of interest and costs, and your orator — that if the proposed wrongful and illegal acts and purposes of the respondents herein are done and committed, the damage to your orator will amount to many thousands of dollars.

Wherefore, your orator charges:

1. That the said Act of Congress, Chapter 199, is superior and supreme to and over any law or statute of the Territory of Oklahoma, or of the State of Oklahoma, and that any law or statute of the said territory, or of the said state, which provides a method or procedure whereby the disability of minority may be removed from minors before they arrive at full and lawful age, applies and can apply only to the citizens of the state or territory who have in them no Indian blood, and not to any Indian of any degree of blood whatsoever, and particularly not to the said Robert F. Goodman, an Indian of the Cherokee Tribe; and that so far as any Act or statute of the territory or state of Oklahoma attempts to declare a Cherokee Indian, and particularly the said Robert F. Goodman, to be of full and lawful age, and capable of transacting his affairs and business before such Indian arrives at lawful age as prescribed by the said Act of Congress, such territorial or state act or statute is wholly invalid, void and of none effect.

2. That the District Court of Washington County, Oklahoma, never had and does not now have any authority, power or jurisdiction to remove the disability of minority from the said minor, Robert

F. Goodman, he being a member of the Five Civilized Tribes, or to receive and act upon the petition, "Exhibit No. 3," or to grant the prayer thereof or to enter the order or decree embodied in the journal entry, "Exhibit No. 4."

7 3. That the said petition and the decree or order entered thereon, in which an attempt is made to remove the disability of minority from the said Robert F. Goodman, are wholly void and of no effect for lack of power and jurisdiction in the said District Court, and the judges thereof to receive the one and enter and grant the other.

4. That the said petition and the decree or order entered thereon, in which an attempt is made to remove the disability of minority from the said Robert F. Goodman, are wholly void and of no effect in

(*a*) That the petition was not presented on the date named in the published notice, "Exhibit A," attached to the petition.

(*b*) That the petition was not sworn to until long after the date which was advertised for its presentation.

(*c*) That the petition was not presented in good faith to the court granting the said order of decree, inasmuch as the petition alleges the object of removing the disabilities of the minor to be to enable him to make improvements upon said allotment, when in truth and in fact, as your orator is informed, and believes, the sole and only object of the petitioning mother and next friend, was to enable the minor to lease his land for oil and gas purposes, and to sell the land itself, and that such conduct on her part was a fraud in fact upon the court granting the said order or decree.

5. That the said pretended lease "Exhibit No. 5," and the said pretended deed, "Exhibit No. 6," are both wholly void, invalid and of no effect in

(*a*) That the said District Court, and the judges thereof, had no power, authority or jurisdiction to remove the disability of minority from the said minor, Robert F. Goodman.

(*b*) That the said petition and the order or decree entered thereon were and are wholly void and invalid, for the reasons set forth in paragraph 4 hereof.

(*c*) That any Act or statute of the territory or state of Oklahoma empowering any court to remove the disability of minority from minors before they actually arrive at the age of majority is, when applied to Indians of the Five Civilized Tribes (of which the said Robert F. Goodman is one), wholly void, invalid and of none effect, the said Act of Congress, Chapter 199, of 35 Statutes at Large

8 312, being supreme and superior thereto, and provides that male minors of the Five Civilized Tribes shall remain such until they arrive at the age of twenty-one years.

6. That the said pretended lease, "Exhibit No. 5," and the said pretended deed, "Exhibit No. 6," are each of them wholly invalid and void and are clouds upon the title of your orator's lease, "Exhibit No. 8," and that the defendants have not, nor has either of them, any estate or interest in the said allotment, or any part thereof and that it is necessary for your orator's quiet and peaceable enjoy-

ment of his said lease, "Exhibit No. 8," that the said pretended lease, "Exhibit No. 5," and the said pretended deed, "Exhibit No. 6," be declared invalid and void, and the cloud thereof removed from your orator's title. And that to effect this end, your orator has no adequate remedy at law, and the said respondents, and each and all of them, should be restrained and enjoined from interfering with your orator's possession and enjoyment of his said lease, "Exhibit No. 8."

Wherefore, you orator needing relief, prays:

First. That the said respondents, and each and every one of them, may be made defendants to this bill of complaint, and compelled to answer each and every allegation herein contained.

Second. That it be adjudged and decreed that all laws or statutes of the Territory of Oklahoma, of the State of Oklahoma, removing disability of minority from male minor Indians of the Five Civilized Tribes before they arrive at the full age of twenty-one years, are wholly illegal and void, because in conflict with, offending against and in contravention of Chapter 199 of 35 Statutes at Large 312.

Third. That it be adjudged and decreed that the said pretended lease, "Exhibit No. 5," and the said pretended deed, "Exhibit No. 6," are wholly invalid, void and of no effect, and clouds upon your orator's title to his said lease, "Exhibit No. 8," and that any and all pretended claims of the respondents, or anyone of them, under the same, are likewise invalid, void and of no effect, and that the respondents have not, nor has any one of them, at any time, had or acquired any right, title, interest, claim or demand in the said eighty-acre allotment, or any part thereof, through, by or under the said pretended lease, or the said pretended deed, and that your orator is the absolute and sole owner of his said lease, "Exhibit No. 8," free and clear of the said pretended lease and deed.

9 Fourth. That the said respondent, James D. Canary, be ordered and directed to surrender up, cancel and destroy his said pretended deed, "Exhibit No. 6," and that he discharge the record thereof in the office of the Recorder of Deeds in and for Washington County, Oklahoma; and that the said respondents, W. O. Truskett and A. A. Truskett, be ordered and directed to surrender up, cancel and destroy their said pretended lease, "Exhibit No. 5," and that they discharge the record thereof in the office of the said Recorder of Deeds.

Fifth. That it be adjudged and decreed that your orator has no adequate remedy at law for the injury which he has sustained, and will sustain, from the said pretended lease and deed, and his removal of the cloud thereof from his title to his said lease, "Exhibit No. 8," and that such injury would be irreparable.

Sixth. That the said defendants, and each and every of them, be restrained from entering upon the said eighty-acre allotment, or any part thereof, and from interfering with your orator in his quiet and peaceable possession thereof, by a writ of injunction issuing out of and under the seal of this Honorable Court, perpetually enjoining and restraining the said defendants, and each and every of them, their respective agents, servants, attorneys, workmen and employees

from interfering with your orator in the quiet possession and enjoyment of his said lease, and the operation of the oil and gas wells now drilled or hereafter to be drilled by him thereon.

Seventh. That a provisional or preliminary injunction be issued forthwith, restraining the said defendants, and each and every of them, their respective agents, servants, attorneys, workmen and employees from committing any of the acts and doings herein complained of by your orator, and from in any way interfering with your orator in the quiet and peaceful possession of his said lease, "Exhibit No. 8," and in his quiet and peaceful operation of the wells now drilled or hereafter to be drilled by him thereon.

Eighth. That the said defendants be decreed to pay the costs of this suit.

Ninth. That this Honorable Court grant your orator such other and further relief as the equity of the case may require and to Your Honors may seem meet, notwithstanding the fact that your orator has not expressly prayed therefor herein.

Tenth. And may it please Your Honors to grant unto your
10 orator, not only a writ of injunction comformable to the prayer of this bill, but also a writ of subpœna of the United States of America, directed to the said defendants, and each and every of them, commanding them and each and every of them, on a day certain, to appear and answer unto this bill of complaint, and to abide and perform such order, direction and decree as to Your Honors may seem meet and proper, and as required by the principles of law, equity and good conscience.

And your orator will ever pray.

FRED D. CLOSSER.

T. H. STANFORD,
G. T. STANFORD,
Solicitors for the Complainant.

STATE OF KANSAS,
County of Montgomery, ss:

Be It Remembered, That on this 22nd day of September, in the year of Our Lord, one thousand, nine hundred and ten, before me, a Notary Public in and for the said county and state, personally appeared Fred D. Closser, who being by me first duly sworn, according to law, did depose and say that he is the above named complainant, and that he has read the foregoing bill of complaint subscribed by him, and knows the contents thereof, and that the statements made therein are true of his own knowledge and belief, except only as to the matters therein stated on information and belief, and as to those matters he believes them to be true.

FRED D. CLOSSER.

Subscribed and sworn to before me the day and year last above written. In witness whereof I have hereunto set my hand and affixed my notarial seal.

My commission expires July 13, 1912.

[SEAL.] FLORA PARSHALL,
Notary Public.

"EXHIBIT No. 1."

To all to whom these presents shall come, Greeting:

Whereas, By the Act of Congress approved July 1, 1902 (32 Stat. 716), ratified by the Cherokee Nation August 7, 1902, it is provided that there shall be allotted by the Commission to the Five Civilized Tribes, to each citizen of the Cherokee Tribe, land equal in value to one hundred and ten acres of the average allotable land of the Cherokee Nation; and,

Whereas, It was provided by said Act of Congress that each citizen shall designate or have designated and selected for him, at the time of his selection of allotment, out of his allotment, as a homestead, land equal in value to forty acres of the average allottable lands of the Cherokee Nation, as nearly as may be, for which he shall receive a separate certificate; and,

11

Whereas, The said Commission to the Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described has been selected by or on behalf of Robert F. Goodman, a citizen of said tribe, as an allotment, exclusive of land equal in value to forty acres of the average allottable land of the Cherokee Nation, selected as a homestead as aforesaid;

Now, therefore, I, the undersigned, Principal Chief of the Cherokee Nation, by virtue of the power and authority vested in me by aforesaid Act of the Congress of the United States, have granted and conveyed, and by these do grant and convey unto the said Robert F. Goodman, all right, title and interest of the Cherokee Nation, and of all other citizens of said Nation, in and to the following described land, viz.: The east half of the Northeast ¼ of the Southwest Quarter of Section Twenty-six (26); and the southwest ¼ of the southeast ¼ of the northeast ¼; and the north half of the *the* northeast ¼ of the southeast ¼ of Section Twenty-seven (27); Township Twenty-nine (29) North, and Range Thirteen (13) East, of the Indian Base and Meridian, in Indian Territory, containing fifty (50) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to all the provisions of said Acts of Congress.

In Witness Whereof, I, the Principal Chief of the Cherokee Nation have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 31st day of March, A. D. 1909.

[SEAL.]

W. C. ROGERS,
Principal Chief of the Cherokee Nation,
By OLIVER A. PHELPS, *Clerk*

Department of the Interior.
Approved Apr. 13-1909.
RICHARD A. BALLINGER, *Secretary.*

"EXHIBIT No. 2."

To all to whom these presents shall come, Greeting:

Whereas, By the Act of Congress approved July 1, 1902 (32 Stat. 716), ratified by the Cherokee Nation August 7, 1902, it is provided that there should be allotted by the Commission to the Five Civilized Tribes, to each citizen of the Cherokee Tribe, land equal in value to one hundred and ten acres of the average allottable lands of the Cherokee Nation; and,

Whereas, It was provided by said Act of Congress that each member of said tribe shall, at the time of the selection of allotment, designate or have selected or designated for him, from his allotment land equal in value to forty acres of the average allottable lands of the Cherokee Nation, as nearly as may be, as a homestead, -or which separate certificate shall issue; and,

Whereas, the said Commission to the Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described has been selected by or on behalf of Robert F. Goodman, a citizen of said tribe, as a homestead.

Now, therefore, I, the undersigned, Principal Chief of the Cherokee Nation, by virtue of the power and authority vested in me by the aforesaid Act of Congress of the United States, have granted and conveyed, and by these do grant and convey unto said Robert F. Goodman, all right, title and interest of the Cherokee Nation, and of all other citizens of said Nation, in and to the following described land, viz: The north half of the southeast ¼ of the northeast quarter; and the southeast ¼ of the southeast ¼ of the northeast quarter of section Twenty-seven (27), Township Twenty-nine (29) North, and Range Thirteen (13) east, of the Indian Base and Meridian, in Indian Territory, containing thirty (30) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to all the provisions of said Act of Congress pertaining to allotted homesteads.

In Witness Whereof, I, the Principal Chief of the Cherokee Nation have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 31st day of March, 1909.

[SEAL.] W. C. ROGERS,
Principal Chief of the Cherokee Nation.

Department of Interior.
Approved April 13-1909.
RICHARD A. BALLINGER, *Secretary.*

"EXHIBIT No. 3."

In the District Court of Washington County, Oklahoma.

No. —.

In the Matter of the Application of ROBERT F. GOODMAN for the Rights of Majority.

13 *Petition.*

Comes now the above named Robert F. Goodman, a minor, by his next friend and mother, C. B. Goodman, a- respectfully petitions this Hon. Court to confer upon him the rights of majority concerning contracts, and to authorize and empower him to transact business in general with the same effect as if his business were transacted by a person over the age of twenty-one (21) years, and in support of this petition respectfully shown and represents to the court the following, to-wit:

That you- petitioner is over the age of nineteen (19) years and seven (7) months, and is an actual and bona fide resident of Washington County, Oklahoma, and has been an actual and bona fide resident of said county for more than one (1) year last past.

That your petitioner is a Cherokee Citizen, and as such Citizen has an allotment of eighty (80) acres of land in Washington County, Oklahoma, which said allotment is under fence, and the greater portion in cultivation, but that there is no house or other necessary buildings thereon.

That the Guardian of this petitioner has about $1600.00 in his hands belonging to said petitioner, and said petitioner desired to have the rights of majority conferred upon him so that he may have and use this money to build a house and barn on said allotment, and make such other improvements as are necessary to make said allotment habitable for himself or tenant, and to do and transact such other business as may become necessary in the management of his affairs.

That your petitioner is of sound mind and fully able to transact his affairs, and that his interests will be greatly and materially promoted by the granting of this petition.

That due notice of the filing of this petition and application, as required by law, was given before the filing of the same by publishing a notice thereon in the Bartlesville Weekly Examiner, a newspaper printed and published in Washington County, Oklahoma, for two consecutive weeks prior to the filing of said petition; a copy of which said notice, together with affidavit of publication thereof, being hereto attached, marked "Exhibit A," and made a part hereof.

That your petitioner offers to pay all costs of this proceeding.

Wherefore, your petitioner prays that the rights of Majority concerning contracts be conferred upon him, and that he be authorized

and empowered by this court to do and transact business in
14 general with the same force and effect as if such business were done and transacted by a person over the age of Twenty-one (21) years.

ROBERT T. GOODMAN, — x Mark,
By His Next Friend C. B. GOODMAN.

Witnesses to mark:
OWEN OWEN.
C. A. LLOYD.

STATE OF KANSAS,
Montgomery County, ss:

C. B. Goodman being first duly sworn, on her oath says, that she is the mother and next friend of the above named minor petitioner, Robert F. Goodman, and, as such next friend, signed the above and foregoing petition; that she has read said petition, and knows the contents thereof, and has personal knowledge of the statement and allegations therein alleged and contained, and that the same are true as she verily believes.

her
C. B. x GOODMAN.
mark

Subscribed and sworn to before me this 15th day of May, 1909.
[SEAL.] W. H. EDGETT,
Notary Public.

My commission expires Sep. 21st, 1912.

"EXHIBIT A."

Affidavit of Publication.

STATE OF OKLAHOMA,
County of Washington, ss:

Be It Remembered, That on this 21st day of April, 1909, before me a Notary Public within the county and state aforesaid, personally appeared R. F. Booth, to me known as the person *who* represents himself to be, who being by me first duly sworn deposes and says that he is the editor and publisher of the Weekly Examiner, a newspaper printed and having a general circulation in Washington County, Oklahoma, and that the attached notice was printed in the said newspaper three times as follows: First publication 16th day of April, 1909, and for two (2) consecutive weeks

R. F. BOOTH.

Subscribed and sworn to before me this 24th day of April, 1909.
[SEAL.] J. ROBERT RAY,
Notary Public.

My commission expires on the 2nd day of December, 1911.
Printer's fee, $3.00.

15 *Notice of Publication.*

(First Published in the Weekly Examiner April 16th, 1909; Last Publication, April 23rd, 1909.)

Notice of Publication for Rights of Majority.

Notice is hereby given that the undersigned, Robert F. Goodman, will, by his next friend and mother C. B. Goodman, file in the District Court in and for Washington County, State of Oklahoma, on the first day of May, 1909, a petition and application praying the court to confer upon him the said Robert F. Goodman, the rights of majority concerning contracts, and empower him, the said Robert F. Goodman, to transact business in general with the same force and effect as if done by a person above the age of twenty-one (21) years.

ROBERT F. GOODMAN,
By His Next Friend, C. B. GOODMAN.

GEORGE, CAMPBELL & RAY,
Att'ys for Petitioner.

"EXHIBIT No. 4."

In the District Court of Washington County, Oklahoma.

In the Matter of the Application of ROBERT F. GOODMAN for Rights of Majority.

Journal Entry.

Now on this 12th day of October, 1909, the same being one of the days of the regular September 1909, terms of said Court, this matter came on for hearing upon the verified application and petition of Robert F. Goodman by his next friend and mother C. B. Goodman, to confer upon him the rights of majority, concerning contracts, and to authorize and empower him to transact business in general with the same effect as if such business were transacted by a person over the age of twenty-one (21) years; and it appearing to the Court that due and legal notice of the filing of said petition has been given by publication for two consecutive weeks prior to the filing thereof in a newspaper printed in said county; and the Court having heard evidence in open court and being fully advised in the premises, finds:

That said petitioner is of the age of twenty years (20) and is of sound mind and fully able and competent to transact his own affairs;

16 and that the interests of said petitioner will be greatly and materially promoted by the granting of said petition and application; that the said Robert F. Goodman is now and has

been for more than one year next before the filing of said petition a bona fide resident of said county and state.

It is therefore, ordered, adjudged and decreed by the court that the rights of majority concerning contracts be, and the same are, hereby conferred upon the said Robert F. Goodman, and he is hereby authorized and empowered to transact business in general with the same effect as if such business were transacted by a person over the age of twenty-one years.

JOHN J. SHEA, *Judge.*

STATE OF OKLAHOMA,
Washington County:

I, John B. Churchill clerk of the District Court in and for the county and state aforesaid do hereby certify the above and foregoing to be a full, true and complete copy of the petition, proof of publication and decree in the matter of the majority rights of Robert F. Goodman as the same appears on file and of record in my office.

Witness my hand and the seal of said Court, this sixteenth day of November, 1909.

JOHN P. CHURCHILL,
District Clerk,
By B. P. CHURCHILL, *Deputy.*

"EXHIBIT No. 5."

In consideration of the sum of Four Hundred ($400.00) 00/100 Dollars the receipt of which is hereby acknowledged, and in further consideration of the covenants and agreements hereinafter mentioned, Robert F. Goodman a single man, hereinafter referred to as the lessor, hereby grants unto F. E. Overfield, hereinafter referred to as the lessee, his heirs, successors and assigns, all the oil and gas in and under the following described premises, together with the exclusive right to enter thereon at all times for the purpose of drilling and operating for oil, gas or water, and to erect, install and maintain all buildings and structures, machinery and appliances, and lay all pipes necessary for the production, storage and transportation of oil, gas or water upon and from said premises. Excepting and reserving however to the lessor, the one tenth (1/10) part of all oil produced and saved from said premises, to be delivered in the pipe line with which the lessee may connect with wells, namely:

all that certain lot of land situate in the Township of 29.
17 County of Washington, in the State of Oklahoma, bounded and described as follows, to-wit:

The SE¼ of the NE¼ of Sec. 27, Tp. 29, R. 13, also N½ of the NE¼ of the SE¼ of Sec. 27, Tp. 29, R. 13, and the E½ of the NE¼ of the NE¼ of the SW¼ of Sec. 26, Tp. 29, R. 13, containing 80 (eighty) acres, more or less. To have and to hold the above premises for the term of 15 years and so long thereafter as oil or gas is found on said premises in paying quantities. If gas is

only found, the lessee agrees to pay at the rate of $50.00 (fifty) each year payable quarterly, for the product of each well while the same is being sold off the premises, and the lessor to have the gas free of cost, at the well to heat all stoves and for lights in one dwelling house on the premises during the same time to be used at lessor's risk. Provided, however, that the lessee shall first have sufficient gas for drilling and operating his wells. Whenever the lessor shall request it, the lessee shall bury all oil and gas lines on tillable land and pay all damages done to growing crops by reason of the burying and removing of said pipe lines. No well shall be drilled nearer than 200 feet to the house or barn on said premises without the consent of the lessor, and no well shall occupy more than one acre. In case no well is completed within one year from this date unless such completion shall be prevented by unavoidable accident or delay, then this grant shall become null and void, unless the lessee shall pay to the lessor, eighty 00/100 Dollars, payable annually in advance for each year thereafter during which such completion is delayed, and a failure to make such payment, by deposit in bank or otherwise within 30 days after the same shall become due, shall terminate all the rights and liabilities of both parties to this contract. The lessee may deposit the rental when it becomes due, in the Caney Valley Natl. Bank at Caney, Kan., and such deposit shall be binding upon the lessor the same as if paid to lessor in person. It is agreed that the lessee may drill as many wells on the above described land as he may deem to be necessary to secure all the oil and gas therefrom. The lessee shall have the right to use sufficient water, gas or oil to run all necessary machinery for operating wells, and also the right to remove all his property at any time he so wishes. It is agreed and understood between the parties hereto that the lessee may surrender this grant at any time by paying the amount then due on the same, together with the additional sum of one dollar releasing the same of record, and thereby be released of all further liabilities.

18 It is understood between the parties to this agreement that all conditions between the parties hereunto shall extend to their successors, heirs, executors and assigns.

In Witness Whereof, the parties hereto have hereunto set their hands and seals this 20th day of October, A. D. 1909.

ROBERT F. GOODMAN. [SEAL.]
F. E. OVERFIELD. [SEAL.]

Signed, sealed and delivered in the presence of:
VAN WINKLER,
Caney, Kans.
DAN HICKS,
Caney, Kans.

STATE OF KANSAS,
Montgomery County, ss:

Before me, Geo. H. Wark, a Notary Public in and for said county and state, on this 20th day of Oct., 1909, personally appeared Robert

F. Goodman a single man, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that — has executed the same as — own free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and seal the day and date above written.

GEO. H. WARK,
Notary Public, Caney, Kans.

[Geo. H. Wark, Notary Public, Montgomery Co., Kans.]

My commission expires Oct. 19, 1911.

Filed for record Oct. 21, 1909 at 8:30 a. m.

FRED A. GRAYBILL,
Reg. of Deeds,
By RUTH G. REED, *Deputy.*

For a full and valuable consideration, the receipt of which is hereby acknowledged, I, F. E. Overfield, hereby assign and transfer to Van B. Winkler and Dick Hicks each an undivided one-third interest in the within and foregoing lease.

Witness my signature this 20th day of October, 1909.

F. E. OVERFIELD.

THE STATE OF OKLAHOMA,
County of Washington:

Before me, the undersigned authority within and for the above named county and state, personally appeared F. E. Overfield who acknowledged that he did sign the above assignment and transfer, for the uses and purposes therein mentioned.

19 In Witness Whereof, I have hereunto affixed my signature and official seal on the date last above written.

G. T. OVERFIELD,
Notary Public.

[Notarial Seal of G. T. Overfield, Notary Public, Washington Co., Okla.]

STATE OF KANSAS,
Montgomery County, ss:

Before me, Geo. H. Wark, a N. P. in and for the — state and Co. on this 20th day of Oct., 1909, personally appeared F. E. Overfield, to me known to be the identical person who executed the within instrument and acknowledged the execution of the same to be his own voluntary act.

GEO. H. WARK, *N. P.*

[Notarial Seal of Geo. H. Wark, Notary Public, Montgomery Co., Kans.]

My Com. Ex. Oct. 19, 1911.

Filed for record Oct. 21, 1909 at 8:30 a. m.

FRED A. GRAYBILL,
Reg. of Deeds,
By RUTH G. REED, *Deputy.*

STATE OF OKLAHOMA,
County of Washington, ss:

I, Fred A. Graybill, Register of Deeds in and for Washington County, Oklahoma, do hereby certify that the within and foregoing instrument is a full, true and correct copy of an Oil and Gas lease and assignment of the same, as appears from the records of my office in Miscellaneous Records No. 6, pages 131-132.

In Testimony Whereof, I have hereunto set my hand and official seal this 17th day of Aug. 1910.

[SEAL.] FRED A. GRAYBILL,
Register of Deeds.

"EXHIBIT No. 6."

This Indenture made this 14th day of December A. D. 1909, between Robert F. Goodman, a single man of Washington County in the State of Oklahoma, of the first part and James D. Canary of Caney, Kansas, of the second part. Witnesseth, that said party of the first part, in consideration of the sum of One Thousand ($1000.00) and No/100 Dollars, and other good and valuable considerations the receipt whereof is hereby acknowledged, does by these presents, grant, bargain, sell and convey unto said party of the second part, his heirs and assigns all the following described real estate, situated in the County of Washington and State of Oklahoma, to-wit:

The South East Quarter (SE¼) of the North East Quarter (NE¼) and the North Half (N½) of the North East Quarter (NE¼) of the South East Quarter (SE¼) all in Section Twenty-seven (27), Township Twenty-nine (29) North, Range Thirteen (13) East; and the East Half (E½) of the North East Quarter (NE¼) of the South West Quarter (SW¼) in Section Twenty-six (26), Township Twenty-nine (29) North, Range Thirteen (13) East in said county and state.

. . . . . .

. . . . . .

To Have and to Hold the Same, Together with all and singular — tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining forever.

And said Robert F. Goodman for himself, his heirs, executors or administrators, does hereby covenant, promise and agree to and with said party of the second part, that at the delivery of these presents he is lawfully seized in his own right of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted premises, with the appurtenances; that the same are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances, of what nature of kind soever;—and that he will warrant and forever defend the same unto the said party of the second part his heirs and assigns, against said party of the first

part his heirs, and all and every person or persons whomsoever, lawfully claim- or to claim the same.

In Witness Whereof, The said party of the first part has hereunto set his hand the day and year first above written.

ROBERT F. GOODMAN.

STATE OF OKLAHOMA,
County of Washington, ss:

Before me a Notary Public, in and for said county and state, on this 14th day of December, 1909, personally appeared Robert F. Goodman to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

[Notary Public Seal, Bertha Taylor, Washington County, Oklahoma.]

BERTHA TAYLOR,
Notary Public.

My commission expires August 20th, 1913.

Deed, General Warranty, from —— —— to —— ——.

21 STATE OF OKLAHOMA,
Washington County, ss:

This instrument was filed for record on the 14th day of Dec., A. D. 1909 at 11:10 o'clock a. m. and duly recorded in W. D. Book 10 on page 225.

Fee $— in advance.

[SEAL.]

FRED A. GRAYRILL,
Register of Deeds.
By RUTH G. REED, *Deputy.*

STATE OF OKLAHOMA,
County of Washington, ss:

I, Fred A. Graybill, Register of Deeds in and for Washington Co., Oklahoma, do hereby certify that the foregoing deed is a full, true and correct copy of a Warranty Deed as filed for record in my office on the date mentioned, and duly recorded in Warranty Deed Record No. 10, on page 225.

In Testimony Whereof, I have hereunto set my hand and official seal on this 19th day of Sept., 1910.

[SEAL.]

FRED A. GRAYBILL,
Register of Deeds.

"EXHIBIT No. 7."

No. —. Received Sept. 4, 1906.

Office U. S. Indian Agent, Muskogee, Ind. Ter.

Form A—Cherokee.

Lease.

Transferrable Only with Consent of the Secretary of the Interior.

Oil and Gas Mining Lease upon Land Selected for Allotment, Cherokee Nation Indian Territory.

(Sec. 72, Act of July 1, 1902, 32 Stat. L., 716, 726.)

This Indenture of Lease, made and entered into, in quadruplicate, on this 28th day of August, A. D. 1906, by and between Hugh Branson, as guardian of Robert F. Goodman, a male minor, born September 25th, 1889, of Nowata, Indian Territory, party of the first part, lessor, and William W. Lantz, of Independence, Kansas, party of the second part, lessee, under and in pursuance of the provisions of section 72 of the Act of Congress approved July 1, 1902, and the regulations prescribed by the Secretary of the Interior thereunder.

Witnesseth, That the party of the first part, for and in consideration of the royalties, covenants, stipulations, and conditions hereinafter contained, and hereby agreed to be paid, observed, and performed by the party of the second part, his heirs, successors, and assigns, does hereby demise, grant, and let unto the party of the second part, his heirs, successors, and assigns, for the term of years ending September 24th, 1910, from the date hereof, all of the oil deposits and natural gas in or under the following described tract of land, lying and being within the Cherokee Indian Nation and within the Indian Territory, to-wit: The N. ½ of the N. E. ¼ of the S. E. ¼ and S. E. ¼ of N. E. ¼ of Section 27, and E. ½ of N. E. ¼ of S. W. ¼ of Section 26, Township 29, Range 13 E., of the Indian Meridian, and containing 80 acres, more or less, with the right to prospect for, extract, pipe, store, refine, and remove such oil and natural gas, and to occupy and use so much only of the surface of said land as may be reasonably necessary to carry on the work of prospecting for, extracting, piping, storing, refining, and removing such oil and natural gas, including also the right to obtain from wells or other sources on said land, by means of pipe lines or otherwise, a sufficient supply of water to carry on said operations, and including still further the right to use such oil and natural gas as fuel so far as it is necessary to the prosecution of said operations.

22

In consideration of which the party of the second part hereby

agrees and binds himself, his heirs, successors, and assigns, to pay or caused to be paid to the United States Indian Agent, Union Agency, Indian Territory, for the lessor, as royalty, the sum of ten per cent of the gross proceeds, on the leased premises, of all crude oil extracted from the said land, such payment to be made at the time of sale or disposition of the oil; the lessee shall pay, in yearly payments, at the end of each year, one hundred and fifty dollars royalty on each gas producing well which he shall use. The lessor shall have the free use of gas for lighting and warming his residence on the premises. It is further agreed that a failure on the part of the lessee to use a gas producing well, where the same can not be reasonably utilized at the rate so prescribed, shall not work a forfeiture of this lease so far as the same relates to mining oil, but if the lessee desires to retain gas-producing privileges he shall pay a royalty of fifty dollars per annum, in advance, on each gas producing well not utilized, the first payment to become due and to be made within thirty days from the date of the discovery of gas.

And the party of the second part further agrees and binds himself, his heirs, successors, and assigns, to pay, or cause to be paid to the said agent, for lessor, as advanced annual royalty on this lease, the sums of money as follows, to-wit: Fifteen cents per acre
23 per annum, in advance, for the first and second years; thirty cents per acre, in advance, for the third and fourth years; and seventy-five cents per acre, in advance, for the fifth and each succeeding year thereafter of the term for which this lease is to run; it being understood and agreed, that said sums of money so paid shall be a credit on the stipulated royalties; and further, that should the party of the second part neglect or refuse to pay such advanced annual royalty for the period of sixty days after the same becomes due and payable, the Secretary of the Interior, after ten days' notice to the parties, may declare this lease null and void, and all royalties paid in advance shall become the money and property of the lessor.

The party of the second part further covenants and agrees to exercise diligence in the sinking of wells for oil and natural gas on the lands covered by this lease, and to drill at least one well thereon within twelve months from the date of the bond by the Secretary of the Interior, and should the party of the second part fail, neglect or refuse to drill at least one well within the time stated, this lease may, in the discretion of the Secretary, be declared null and void, after ten days' notice to the parties; provided, that the lessee shall have the privilege of delaying operations for a period not exceeding five years from the date of the approval of the bond to be furnished in connection herewith, by paying the United States Indian Agent, Union Agency, Indian Territory, for the use and benefit of the lessor, in addition to the required annual advanced royalty, the sum of one dollar per acre per annum for each leased tract remaining undeveloped, but the lessee may be required to immediately develop the tracts leased, should the Secretary of the Interior determine that the interests of the lessor demand such action.

That the party of the second part further agrees to carry on operations in a workmanlike manner to the fullest possible extent, unavoidable casualties excepted; to commit no waste on the said land, and to suffer no waste to be committed upon the portion in his occupancy or use; to take good care of the same, and to promptly surrender and return the premises upon the termination of this lease to the party of the first part, or to whomsoever shall be lawfully entitled thereto, and not to remove therefrom any buildings or permanent improvements erected thereon during the said term by the party of the second part, but said buildings and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, in addition to the other considerations herein specified, excepting the tools, boilers, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells, shall remain the property of said party of the second part, and may be removed at any time before the expiration of sixty days from the termination of the lease; that he will not permit any nuisance to be maintained on the premises under his control, nor allow any intoxicating liquors to be sold or given away for any purposes on such premises; that he will not use such premises for any other purposes than those authorized in this lease, and that before abandoning any well, he will securely plug the same so as to effectually shut off all water above the oil-bearing horizon.

24

And the said party of the second part further covenants and agrees that he will keep an accurate account of all oil-mining operations, showing the sales, prices, dates, purchasers, and the whole amount of oil mined or removed; and all sums due as royalty shall be a lien on all implements, tools, movable machinery, and all other personal chattels used in said prospecting and mining operations, and upon all of the unsold oil obtained from the land herein leased, as security for the payment of said royalty.

And it is mutually understood and agreed, that this indenture of lease shall in all respects be subject to the rules and regulations heretofore or that may be hereafter *be* lawfully prescribed by the Secretary of the Interior, relative to oil and gas leases in the Cherokee Nation, and that this lease, or any interest therein, shall not, by working or drilling contract, or otherwise, or the use thereof, directly or indirectly, be sublet, assigned, or transferred, without the consent of the Secretary of the Interior first obtained, and that should he or his sublessees, heirs, executors, administrators, successors, or assigns violate any of the covenants, stipulations, or provisions of this lease, or any of the regulations, or fail for the period of sixty days to pay the stipulated royalties provided for herein, then the Secretary of the Interior, after ten days from notice to the parties hereto, shall have the right to avoid this indenture of lease and cancel the same, when all the rights, franchises and privileges of the lessee, his sublessees, heirs, executors, administrators, successors, or assigns hereunder, shall cease and end without resorting to the courts and without further proceedings, and the lessor shall

be entitled to immediate possession of the leased land and the permanent improvements located thereon.

If the lessee make reasonable and bona fide effort to find and produce oil in paying quantity, as herein required of him, and such effort is unsuccessful, he may at any time thereafter, with the approval of the Secretary of the Interior, surrender and wholly terminate this lease upon the full payment and performance of all his then accrued and payable obligations hereunder; Provided, however, that approval of such surrender by the Secretary will be required only during the time his approval of the alienation of the land is required by law.

It is further expressly agreed, that this lease is made with full knowledge of the fact that, under the regulations prescribed by the Secretary of the Interior governing the leasing of lands in the Cherokee Nation, Indian Territory, lessees are prohibited from being directly or indirectly interested in leases, in their own names, or in the names of other persons, or as owners or holders of stock in corporations, or as members of associations, covering an aggregate of more than 4,800 acres of land in the Cherokee and Creek Nations, that the said prohibition is made a part and condition of this lease, and that the Secretary of the Interior reserves the right to cancel leases at any time during the period for which they are to run, after notice as herein mentioned, when he is satisfied that the terms of the lease or the regulations heretofore or hereafter prescribed have been violated in any particular, and I further agree not to transfer, assign, or sublet, by working or drilling contract, or otherwise, or allow the use of the land or any oil or gas in or under it, without first obtaining the consent of the Secretary of the Interior, and that any violations of the lease or the regulations heretofore or hereafter prescribed by the Secretary of the Interior, respecting oil and gas leases in the Cherokee Nation, shall render this lease subject to cancellation, after ten days from receipt by me of notice, in the discretion of the Secretary of the Interior, whose declaration of cancellation shall be effective without resorting to the court and without further proceedings, and that the lessor shall then be entitled to immediate possession of the land.

If, at any time, the Secretary of the Interior, after due notice to the persons or parties interested, determines that any person, partnership, or corporation has, by means of stock ownership or otherwise, directly or indirectly, obtained and holds interests in leases of oil and gas properties in said Territory, said leases covering in the aggregate an acre or more than 4,800 acres; and further finds that the property herein leased is a part of said aggregate area, then the Secretary of the Interior may cancel this lease in the same manner as provided for in the case of any violation of the terms of said lease.

It is further agreed and understood, that the approval of this lease shall be of no force or effect, unless the party of the second part furnish, within sixty days from the date of approval of the application filed in connection herewith, a bond to the satisfaction of the Secretary of the Interior, in accordance with the

regulations of March 20, 1905, prescribed by the Secretary of the Interior, which shall be deposited and remain on file in the Indian Office during the life of this lease.

In Witness Whereof, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned.

(Signed) HUGH BRANSON, [SEAL.]
Guardian of Robert F. Goodman.
(Signed) WILLIAM LANTZ. [SEAL.]

Attest:

Two witnesses to execution by lessor:
(Signed) FRANK A. HITCHENS,
P. O., Nowater, Ind. Ter.
(Signed) WILSON A. CHASE,
P. O., Nowata, I. T.

Two witnesses to execution by lessee:
(Signed) WILSON A. CHASE,
P. O., Nowata, I. T.
(Signed) SAMUEL M. BRISCOE,
P. O., Independence, Kansas.

2759. Indian Office, Jan. 26, 1907. Encl. No. 5. 8521 9952 12366.

Department of the Interior, Washington, D. C.

Oil and Gas Mining Lease. Cherokee Nation, Ind. Ter.

Hugh Branson, as guardian of Robert F. Goodman, a male minor, to William W. Lantz, assigned to Lenox Oil Co., Muskogee, Okla., Independence, Kansas, of N. ½ of N. E. ¼ of S. E. ¼ and S. E. ¼ of N. E. ¼ of Section 27 and E. ½ of N. E. ¼ S. W. ¼, Sec. 26, Tp. 29, Range 13 E., in the Cherokee Nation, Indian Territory. Dated August 28, 1906. Expires September 24, 1910.

25506 Indian Office, Mar. 13, 1907. Incl. No. —.

Department of the Interior, U. S. Indian Service. Union Agency, Muskogee, Ind. T., Jan. 16, 1907. The within lease is forwarded to the Commissioner of Indian Affairs with recommendation that it be approved. See my report of even date. (Signed) Dana H. Kelsey, U. S. Indian Agent.

Department of the Interior, G. A. W. Office of Indian Affairs. Washington, D. C., Feb. 11, 1907. Respectfully submitted to the Secretary of the Interior, with recommendation that it be 27 approved. (Signed) C. F. Larrabbee, Acting Commissioner.

Department of the Interior, Washington, D. C., Mar. 12, 1907. Approved. (Signed) Jessie E. Wilson, Assistant Secretary of the Interior.

No. 500. Received Mar. 22, 1907.

OFFICE OF U. S. INDIAN AGENT, MUSKOGEE, IND. TER.

I, the officer in charge of the United States Indian Agency, Union Agency, Muskogee, Oklahoma, do hereby certify that the above and foregoing lease is a full, true and correct copy of said instrument as shown by the records of my office.

Dated at Muskogee, Oklahoma, on this 14th day of December, 1909.

DANA H. KELSEY,
United States Indian Superintendent,
By W. W. BENNETT,
Chief Clerk.

STATE OF OKLAHOMA,
Washington County, ss:

This instrument was filed for record Dec. 17th, 1909, at one o'clock p. m., and is duly recorded in book one (1) of leases, page 62.

FRED A. GRAYBILL,
Register of Deeds.

"EXHIBIT No. 8."

This agreement, Made and entered into this 14th day of September, 1910, at Nowata, State of Oklahoma, by and between Hugh Branson, the duly appointed, qualified and acting Guardian of Robert F. Goodman, a minor, party of the first part, and Fred D. Closser, party of the second part.

Witnesseth: That, whereas, on the 14th day of September, 1910, the County Court within and for the County of Nowata, State of Oklahoma, made an order authorizing the said first party of the first part to lease for oil and gas certain real estate of the said Robert F. Goodman, situated in the County of Washington, State of Oklahoma, as described in said order;

And, Whereas, under and by virtue of said order, the said party of the first part, on the 14th day of September, 1910, leased the hereafter described real estate specified in said order, subject to the confirmation of said court for the sum of One Dollar; and, whereas,

28 the said County Court, under the examination of said oil and gas lease, made an order confirming same and directing said oil and gas lease to be executed to said party of the second part.

Now, therefore, the said Hugh Branson, as the guardian of the said Robert F. Goodman, party of the first part, pursuant to said order and in consideration of the sum of One Dollar in hand paid, the receipt of which is hereby acknowledged, and other valuable considerations, hereinafter set forth, does hereby grant, demise, lease and let unto the said party of the second part, heirs or assigns, for the sole purpose of drilling and operating for oil and gas, the following described real estate, situate in the County of Washington, State of Oklahoma, to-wit: N. ½ of N. E. ¼ of S. E. ¼ and S. E. ¼ of N. E. ¼ of Section 27, and E. ½ of N. E. ¼ of S. W. ¼ of Section 26, in Township 29 N., Range 13 East.

To Have and to Hold the same for the term of thirty days from September 23rd, 1910, and as much longer as oil or gas of commercial value is being found or produced thereon, with the full and exclusive right, power and authority to the party of the second part to enter upon the above described land and drill and bore for oil

and gas, take out or remove from said land all machinery, appliances and equipment necessary for the prosecution of said work; to erect all necessary buildings on said lands and shall have full right and privilege to use water free of charge from said premises for drilling or operating thereon, avoiding, however, as far as practicable, damage to growing crops, but in case of such damage, to pay for such as may be mutually agreed upon or determined by appraisers.

In consideration of the premises, the party of the second part agrees to pay as royalty to said party of the first part, the one-eighth part of all oil produced and saved from said premises, to be delivered to the party of the first part in tanks or pipe lines, and for each gas well said second party shall pay said first party the sum of One Hundred and Fifty Dollars per year, payable semi-annually in advance, from the time when first used.

All payments as above provided may be made by sending checks by mail to first party personally to post office address at Nowata, Oklahoma, or by depositing the amount thereof to his credit in the State Bank and Trust Company of Nowata, Oklahoma.

First party to have gas free of charge for all domestic use on the above described land, to be taken at said well or wells so discovered and utilized. Second party to have so much gas free of royalty as may be necessary for operating and drilling on said land.

29 It is further mutually agreed by and between the parties hereto that the said party of the second part shall commence a well under this grant, conveyance and lease, on or before thirty days from September 23rd, 1910, by drilling for gas or oil thereon.

It is further mutually agreed that if said party of the second part fails to commence said well within the time specified, he shall pay to the party of the first part the sum of One Dollar per acre per year, the same to be paid quarterly in advance, in the manner provided above, it being specifically agreed and understood, however, that when a well or wells are sunk, royalties shall be paid as herein agreed and all cash rentals shall cease.

The failure of said party to complete said well, or make said payments as above set forth, shall terminate this lease, and the same shall become null and void, and either of said parties shall have the right to cancel this grant and conveyance by giving the other party thirty days' notice in writing his election so to do and by applying or tendering the sum of One Dollar and releasing this grant or conveyance of record.

In consideration of the premises, the party of the first part hereby gives and grants to the party of the second part the exclusive right and privilege to lay, maintain and use pipe lines for gas, water and oil, upon, over and across said lands, said pipe lines to be at least 12 inches under the farming lands, unless otherwise mutually agreed upon.

Witness our hands and seals this, the day and year first above written.

(Signed) HUGH BRANSON.

Signed, sealed and delivered in the presence of:

____ ____.

I, Bert Van Leuven, Judge of the County Court of Nowata County, State of Oklahoma, do hereby approve the foregoing oil and gas lease.

Dated this 14th day of September, 1910.

(Signed) BERT VAN LEUVEN,
[SEAL.] *Judge of County Court.*

STATE OF OKLAHOMA,
Nowata County, ss:

Before me, Bert Van Leuven, County Judge, in and for said County and State, on this 14th day of September, 1910, personally appeared Hugh Branson, Guardian as aforesaid, to me known to be the identical person who executed the within and foregoing instrument, and acknowledge that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

(Signed) BERT VAN LEUVEN,
[SEAL.] *County Judge.*

Filed: September 23, 1910.

And thereafter, to-wit, on the 25th day of January, 1911, the defendant, A. A. Truskett and W. O. Truskett, filed a joint and several demurrer, which demurrer is in words and figures as follows:

The Joint and Several Demurrer of A. A. Truskett and W. O. Truskett, Defendants Herein.

A. A. Truskett and W. O. Truskett, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true, in such manner and form as the same are therein set forth and alleged, demurs thereto, and for said cause of demurrer shows:

First. Because there is in full force and operation, in the State of Oklahoma, a law which confers upon the District Courts of that state full power and jurisdiction to remove the disabilities of minority from all male citizens of the State of Oklahoma under the age of twenty-one years, and female citizens under the age of eighteen years, such disabilities to be removed in the manner provided for in said law.

Second. Because said law is operative upon members and citizens of the Five Civilized Tribes, with the same force and effect as said law is operative upon any other citizen of the State of Oklahoma.

Third. Because Robert F. Goodman, the allottee referred to in plaintiff's bill, is alleged to be of such degree of Indian blood that all restrictions on the alienation of his allotment in the Oklahoma Nation were removed by the Act of Congress, approved May 27th, 1908; and as all restrictions on the land of said Robert F. Goodman were removed prior to the decree conferring majority rights on him,

as alleged in plaintiff's bill, said Robert F. Goodman was in the same class as any other citizen of the State of Oklahoma with respect to his civil, political and property rights.

Fourth. Because said law of the State of Oklahoma, authorizing said District Court to confer majority rights, in the manner
31 therein provided, does not contravene the Act of Congress approved May 27th, 1908, nor does said law of the State of Oklahoma contravene any other law of the Congress of the United States.

Fifth. Because the exhibits attached to complainant's bill discloses that a decree was entered by the District Court for Washington County, Oklahoma, removing the disabilities of minority of Robert F. Goodman, which said decree is not subject to attack in the manner attempted in complainant's bill.

Sixth. Because these defendants procured a valid and enforcible lease for oil and gas mining purposes from said Robert F. Goodman after the rights of majority were conferred upon him, as shown by said bill, which said lease is paramount and superior to the lease relied upon by complainant herein.

Wherefore, and for divers other causes of demurrer appearing in said bill, these defendants demur thereto, and pray the judgment of this court whether they shall be compelled to make any further or other answer to said bill, and prays to be hence dismissed with their costs and charges in this behalf wrongfully sustained.

VEASEY & ROWLAND,
Attorneys.

STATE OF KANSAS,
County of Montgomery, ss:

W. O. Truskett makes solemn oath, and says that he is one of the above named defendants, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

W. O. TRUSKETT.

Subscribed and sworn to before me this — day of January, 1911.

[NOTARY SEAL.] GEO. H. WARK,
Notary Public, Caney, Kan.

My commission will expire Oct. 19, 1911.

We hereby certify that, in our opinion, the foregoing demurrer is well founded in point of law.

VEASY & ROWLAND,
Counsel for Defendants, A. A. Truskett and W. O. Truskett.

Filed Jan. 25, 1911.

And thereafter, to-wit, on the 11th day of December, A. D. 1911, the same being one of the days of the regular Chickasha,
32 1911, term of the United States Circuit Court for the Eastern District of Oklahoma, court met pursuant to adjournment

at Muskogee, as of and for the Chickasha term thereof. Present and presiding, the Honorable Ralph E. Campbell, Judge.

Among the proceedings had on this day, is the following:

Order Overruling Demurrer to Petition and Permitting Defendants to Plead.

The demurrer of the defendants, W. O. Truskett and A. A. Truskett, to the petition herein, having been heretofore argued and submitted, and due consideration having been given the same, the court does find that said petition is good and sufficient in law, and that said demurrer be, and the same is hereby overruled; further, that said defendants be, and are hereby allowed their exceptions to this order of the court, and granted thirty (30) days from this date to further plead.

(Signed) RALPH E. CAMPBELL, *Judge.*

Dated this 11th day of Dec., 1911.

And thereafter, to-wit, on the 8th day of January, A. D. 1912, the same being one of the days of the regular January, 1912, term of the United States District Court for the Eastern District of Oklahoma, court met pursuant to adjournment at Muskogee, Oklahoma. Present and presiding, the Honorable Ralph E. Campbell, Judge.

Among the proceedings had on this day, is the following, to-wit:

Decree.

On this 11th day of December, 1911, the same being a regular day of the November term, 1911, of the United States Circuit Court for the Eastern District of Oklahoma, sitting at Muskogee, this cause coming on to be heard, and the court having fully considered the joint and several demurrer of the defendants, A. A. Truskett and W. O. Truskett, heretofore filed herein, and the arguments and briefs of counsel thereon, and being fully advised in the premises finds that such demurrer should be overruled, to which finding the defendants, A. A. Truskett and W. O. Truskett, then and there duly excepted.

Whereupon it was ordered by the court that the joint and several demurrer of the defendants, A. A. Truskett and W. O.
33 Truskett, to complainant's bill be, and the same hereby is, in all things overruled, to which action of the court the defendants, A. A. Truskett and W. O. Truskett, then and there duly excepted.

Upon the application of said defendants, they were given the period of thirty days from the above order within which to further plead to complainant's bill.

Now, on this 6th day of January, 1912, the same being a regular day of the January term, 1912, of this court, sitting at Muskogee, this cause came on for further hearing, and counsel for the defendants, A. A. Truskett and W. O. Truskett, announced to the court

that they would file no further pleading herein to complainant's bill, but elected to stand on their joint and several demurrer heretofore overruled by the court, and appeal from such decision of the court in overruling such demurrer to the Circuit Court of Appeals for the Eighth Circuit.

Whereupon, it was ordered by the court that complainant's bill be taken as confessed as against the defendants, A. A. Truskett and W. O. Truskett, to which action of the court such defendants then and there duly excepted.

It is therefore ordered, adjudged and decreed by the court, that the oil and gas mining lease claimed by the defendants, A. A. Truskett and W. O. Truskett, herein, being a lease executed on the 20th day of October, 1909, by one Robert F. Goodman to one F. E. Overfield, covering the following described land situated in Washington County, Oklahoma, to-wit: The North Half of the Northeast Quarter of the Southeast Quarter and the Southeast Quarter of the Northeast Quarter of Section Twenty-seven (27), and the East Half of the Northeast Quarter of the Southwest Quarter of Section Twenty-six (26), Township Twenty-nine (29) North, Range Thirteen (13) East, and passing to such defendants, A. A. Truskett and W. O. Truskett, by virtue of certain mesne assignments, be, and such lease is, declared to be void and of no effect whatever, and the record thereof in the office of the Register of Deeds for Washington County, Oklahoma, is hereby declared cancelled, set aside and held as naught.

It is further ordered and adjudged by the court, that the title of the complainant with respect to his certain oil and gas mining lease executed to him on the 14th day of September, 1910, by one Hugh Branson, guardian of Robert F. Goodman, a minor, covering the land above described, be, and the same hereby is, quieted
34 as against the claim of such defendants, A. A. Truskett and W. O. Truskett, under said lease for oil and gas mining purposes, hereinbefore declared void and of no effect, and such defendants are hereby barred and foreclosed from ever asserting any right, title or interest to such oil and gas mining lease adverse to the lease of the complainant as hereinbefore described.

It is further ordered and adjudged by the court that the defendants A. A. Truskett and W. O. Truskett, their agents, servants and employees be, and they hereby are, perpetually enjoined from interfering with the complainant in the operation of said land for oil and gas mining purposes under his said lease, and from in any way interfering with the enjoyment by the complainant of the terms and conditions of such lease.

It is further ordered and adjudged by the court, that the complainant have and recover of such defendants his costs and charges herein laid out and expended.

To all of which judgment and decree the defendants, A. A. Truskett and W. O. Truskett, then and there duly excepted, and in open court such defendants prayed an appeal to the Circuit Court of Appeals of the United States for the Eighth Circuit from the decision of this court overruling said demurrer and from this de-

cree, and likewise in open court such defendants gave due and proper notice of such appeal to the complainant and to the defendant, James D. Canary; whereupon said defendants, A. A. Truskett and W. O. Truskett, tendered their assignments of errors herein, which was by the court ordered filed, and said prayer for appeal is allowed in open court, and such defendants given thirty days from this date in which to make, have approved and filed in the office of the clerk of this court a due and proper cost bond in the sum of Two Hundred and Fifty Dollars ($250.00), with sureties to be approved by the Judge of this court, and upon the filing of such bond, so approved, the clerk is ordered to make up a transcript of the record herein in accordance with the practice in appeals in equity causes.

RALPH E. CAMPBELL, *Judge.*

O. K.
VEASEY & ROWLAND.
O. K.
STANFORD & STANFORD.

Filed Jan. 6th, 1912.

Assignment of Errors.

Come now the defendants, A. A. Truskett and W. O. Truskett, by their attorneys, Veasy and Rowland, and say that in the
35 record and proceedings in the above entitled action, there is manifest error in this:

That the order rendered herein by the Circuit Court of the United States for the Eastern District of Oklahoma, overruling the joint and several demurrer of these defendants on the 11th day of December, 1911, and the decree made herein by the District Court of the United States for the Eastern District of Oklahoma, on the 6th day of January, 1912, were erroneous, for the following reasons:

I.

That in overruling such demurrer, the Circuit Court erred in not holding as a matter of law that, at the time of the execution and delivery of the oil and gas mining lease claimed by the defendants, and at the time that the District Court for Washington County, Oklahoma, entered a decree conferring majority rights on Robert F. Goodman, that the District Courts of the State of Oklahoma had full power and authority to confer such rights of majority, and that such power existed with respect to Cherokee Indian allottees of the degree of Indian blood possessed by said Robert F. Goodman.

II.

That in overruling such demurrer, said court further erred in not holding as a matter of law that the rights of majority were conferred on Robert F. Goodman by such decree of the District Court of Washington County, Oklahoma, prior to the date of the oil and gas mining lease, claimed by these defendants, and that under such

decree, said Goodman had the same power to execute and deliver such lease to these defendants as though he were at such time a person over the age of twenty-one years.

III.

That in overruling such demurrer, the court further erred in not holding as a matter of law that those provisions of the laws of Oklahoma, authorizing the District Courts of such state to confer rights of majority upon minors, was not in conflict with the provisions of the Act of Congress approved May 27, 1908.

IV.

That in overruling such demurrer, the court erred in holding, as a matter of law, that the Act of Congress approved May 27, 1908, was in conflict with the laws of the State of Oklahoma, authorizing such District Courts to confer majority rights, in consequence of which the laws of the State of Oklahoma were not operative
36 with respect to Cherokee Indian allottees of the degree of blood possessed by Robert F. Goodman.

V.

That in overruling such demurrer, the court further erred in not holding, as a matter of law, that complainant's bill was without equity, and that he was entitled to no relief thereunder.

VI.

That the court, in overruling such demurrer, erred in not holding as a matter of law that the oil and gas mining lease, relied upon by the complainant, was invalid and unenforceable.

VII.

That in overruling such demurrer, the court erred in not holding as a matter of law that these defendants were the owners of a valid and enforceable lease from said Robert F. Goodman, and that such lease was paramount and superior to the lease of the complainant.

VIII.

Because the District Court of the United States, for the Eastern District of Oklahoma, erred in entering a decree herein, quieting the title of the complainant with respect to the oil and gas mining lease claimed by him, as against the lease of these defendants, and in perpetually enjoining these defendants from entering upon the lands covered by their lease, and operating and developing the same for oil and gas mining purposes.

IX.

Because the court erred in making the decree entered herein against these defendants, and erred in granting the plaintiff any relief whatsoever thereunder.

Wherefore, Defendants pray that the decree and order of the Circuit Court of the United States, for the Eastern District of Oklahoma, made on the 11th day of December, 1911, overruling the joint and several demurrer of these defendants and the final decree herein, made this 6th day of January, 1913, by the District Court of the United States for the Eastern District of Oklahoma, be reversed, and said court directed to set aside such orders and decree, and be directed to enter an order herein dismissing complainant's bill.

(Signed) JAS. A. VEASEY,
D. A. ROWLAND,
Attorneys for Defendants.

Filed January 6th, 1912.

37 And thereafter, to-wit, on the 18th day of January, A. D 1912, the defendants, A. A. Truskett and W. O. Truskett, filed their cost bond, which cost bond is in words and figures as follows, to-wit:

Cost Bond.

Know all men by these presents:

That we, A. A. Truskett and W. O. Truskett, as principals, and Southwestern Surety Insurance Company of Durant, Oklahoma, as surety, are held and firmly bound unto the above named Fred D. Closser in the sum of Two Hundred and Fifty Dollars ($250.00), to be paid to the said Fred D. Closser for the payment of which well and truly to be made we bind ourselves our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 11th day of January, 1912.

Whereas, late- at the session of the District Court of the United States for the Eastern District of Oklahoma, in the suit pending in said court between Fred D. Closser, complainant, and James D. Canary, A. A. Truskett and W. O. Truskett, defendants, the said A. A. Truskett and W. O. Truskett having obtained from said court an order allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree of the aforesaid suit, which said appeal was ordered and allowed in open court at the rendition of the decree therein;

Now the within and above obligation is such that, if the said A. A. Truskett and W. O. Truskett shall prosecute their said appeal to effect, and shall answer all damages and costs that may be awarded against them if they fail to make their plea herein good, then the

above obligation is to be void; otherwise to remain in full force and effect.

A. A. TRUSKETT,
W. O. TRUSKETT,
By JAMES A. VEASEY, *Att'y,*
Principals.
SOUTHWESTERN SURETY INSURANCE COMPANY,
By J. F. McILHENY,
[CORPORATE SEAL.] *Attorney-in-Fact, Surety.*

38 I hereby approve the within bond this 18th day of January, 1912.

RALPH E. CAMPBELL,
United States District Judge for the Eastern District of Oklahoma.

Filed January 18th, 1912.

Præcipe.

To R. P. Harrison, clerk of the above court:

Whereas, On the 6th day of January, 1912, a decree was entered in the above entitled and numbered cause in favor of the appellee, Fred D. Closser, and against the appellants, A. A. Truskett and W. O. Truskett, and on said date, in open court, an appeal was prayed from said decree, and duly allowed, and the appellants, A. A. Truskett and W. O. Truskett, have filed their assignment of errors and cost bond;

You are, therefore, requested to make up a transcript of the record in this cause containing:

(1) The bill filed by complainant.

(2) The joint and several demurrer filed by the defendants, A. A. Truskett and W. O. Truskett.

(3) The order of court overruling such demurrer.

(4) The order of court and final decree entered herein on the 6th day of January, 1912.

(5) The assignment of errors filed herein.

(6) The cost bond filed by the appellants.

(7) This præcipe for a transcript.

And you will proceed to have the record in this cause printed under your supervision at Muskogee, Oklahoma, in accordance with the rules of the United States Circuit Court of Appeals for the Eighth Circuit and the Supreme Court of the United States.

VEASEY & ROWLAND,
Solicitors for Appellants, A. A. Truskett and W. O. Truskett.

The appellee, Fred D. Closser, accepts notice of the above, and agrees that a transcript of the record in this cause, containing

39 the matters set forth above, contains everything that is necessary for a hearing in the Appellate Court in this cause.

Signed at Independence, Kansas, this 17 day of January, 1912.

STANFORD & STANFORD,
Solicitors for Appellee.

Filed January 18th, 1912.

Certificate of Clerk.

UNITED STATES OF AMERICA,
Eastern District of Oklahoma, ss:

I, R. P. Harrison, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the case of Fred D. Closser v. James D. Canary, et al., as required by the præcipe of counsel filed in this cause.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office, in the City of Muskogee, Oklahoma, this — day of —— A. D. 1912.

R. P. HARRISON, *Clerk,*
By —— ——, *Deputy.*

40 (*Appearance of Counsel for Appellants.*)

On the eighteenth day of March, A. D. 1912, the appearance of counsel for appellants was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 3749.

A. A. TRUSKETT and W. O. TRUSKETT, Appellants,
vs.
FRED D. CLOSSER.

The Clerk will enter my appearance as counsel for the Appellants.

JOHN J. JONES.
JAS. A. VEASEY.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 3749. A. A. Truskett, et al., Appellants, vs. Fred D. Closser. Appearance. Filed Mar. 18, 1912. John D. Jordan, Clerk. John J. Jones, James A. Veasey, Counsel for Appellants.

(*Appearance of Counsel for Appellee.*)

And on the twentieth day of March, A. D. 1912, the appearance of counsel for appellee was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 3749.

A. A. TRUSKETT and W. O. TRUSKETT, Appellants,
vs.
FRED D. CLOSSER.

The Clerk will enter my appearance as Counsel for the Appellee.

T. H. STANFORD &
G. T. STANFORD,
Independence, Kansas.
EUGENE MACKEY,
Farmers Bank Bldg., Pittsburg, Pa.

41 (Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 3749. A. A. Truskett, et al., Appellants, vs. Fred D. Closser. Appearance. Filed Mar. 20, 1912. John D. Jordan, Clerk. T. H. Stanford, G. T. Stanford, Eugene Mackey, Counsel for Appellee.

(*Order of Submission.*)

And on the fourth day of June, A. D. 1912, in the record of the proceedings of said Circuit Court of Appeals is an order of submission in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1912.

TUESDAY, June 4, 1912.

No. 3749.

A. A. TRUSKETT et al., Appellants,
vs.
FRED D. CLOSSER.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

This cause having been called for hearing in its regular order, argument was commenced by Mr. James A. Veasey for appellants, continued by Mr. G. T. Stanford and Mr. Eugene Mackey for appellee and concluded by Mr. James A. Veasey for appellants.

Thereupon, this cause was submitted to the Court on the transcript of record from said District Court and the briefs of counsel filed herein.

(*Opinion.*)

And on the fifth day of August, A. D. 1912, the opinion of the United States Circuit Court of Appeals for the Eighth Circuit was filed in said cause, in the words and figures following, to-wit:

42 United States Circuit Court of Appeals, Eighth Circuit.

No. 3749, May Term, A. D. 1912.

A. A. TRUSKETT and W. O. TRUSKETT, Appellants,
vs.
FRED D. CLOSSER, Appellee.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

Mr. James A. Veasey (Mr. L. A. Rowland on the brief), for appellants.

Mr. G. T. Stanford, Mr. Eugene Mackey (Mr. T. H. Stanford on the brief), for appellee.

Before Sanborn and Hook, Circuit Judges, and Willard, District Judge.

WILLARD, District Judge, delivered the opinion of the court:

Robert F. Goodman, a Cherokee Indian of one-eighth Indian blood, became twenty-one years of age on September 25, 1910. Nearly one year before that and on October 12, 1909, the District Court of Washington County, Oklahoma, entered a judgment which purported to remove his disabilities as a minor, and eight days thereafter, on October 20, 1909, he leased to Overfield, the assignor of the appellants, A. A. and W. O. Truckett, who were the defendants below, the land in question, which was patented to him on March 31, 1909, as a portion of his allotment selection in the lands of the Cherokee Indian Nation, under the Act of July 1, 1902, (32 Stat. 716).

On September 14, 1910, the general guardian of Goodman, under authority of the Probate Court, leased the same land to the appellee, Closser, who was the plaintiff below.

As said by appellants in their brief, the exact question presented is this:

43 "Did the District Court of Washington County, Oklahoma, have jurisdiction to confer the rights of majority on Robert F. Goodman, a Cherokee Indian allottee of one-eighth degree Indian blood? If so, appellants' lease is valid and their demurrer to appellee's bill should have been sustained. If not, the action of the court below was not error."

The question was presented in the court below by demurrer to

the bill. On the overruling of this demurrer defendants declined to answer, and a decree was entered quieting plaintiff's title to his leasehold interest.

The decision of the case requires a construction of the Act of May 27, 1908 (35 Stat. 312).

At the time of the passage of this Act the United States had full control of the land allotted to Goodman. In Heckman v. United States, decided by the Supreme Court on April 1, 1912, which case affirmed the judgment of this court in a case reported under the name of United States v. Allen, 179 Fed. 13, it was said:

"The placing of restriction upon the right of alienation was an essential part of the plan of individual allotment; and limitations were imposed by each of the allotment agreements. The separate statutes were supplemented by the general acts of 1906 and 1908, already mentioned. These restrictions evinced the continuance, to this extent at least, of the guardianship which the United States had exercised from the beginning. That the conferring of citizenship was in no wise inconsistent with the retention of control over the disposition of the allotted lands, was expressly decided in the case of Tiger v. Western Investment Co., supra, in which the conclusions of the court were thus stated:

" 'Conceding that Marchie Tiger by the act conferring citizenship obtained a status which gave him certain civil and political rights, inhering in the privileges and immunities of such citizenship unnecessary to here discuss, he was still a ward of the Nation so far as the alienation of these lands was concerned, and a member of the existing Creek Nation. * * * Upon the matters involved our conclusions are that Congress has had at all times, and now has, the right to pass legislation in the interest of the Indians as a dependent people; that there is nothing in citizenship incompatible with this guardianship over the Indian's lands inherited from allotters as shown in this case; that in the present case when the act of 1906 was passed, the Congress had not released its control over the alienation of lands of full-blood Indians of the Creek Nation; that it was within the power of Congress to continue to restrict alienation by requiring, as to full blood Indians, the consent of the Secretary of the Interior to a proposed alienation of lands such as are involved in this case; that it rests with Congress to determine when its guardianship shall cease, and while it still continues it has the right to vary its restrictions upon alienation of Indian lands in the promotion of what it deems the best interest of the Indian.' "

44 Section 1 of the Act of May 27, 1908, is as follows:

"SECTION 1. That from and after sixty days from the date of this Act the status of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as regards restrictions on alienation or incumbrance, be as follows: All lands, including homesteads, of said allottees enrolled as inter-married whites, as freedmen, and as mixed-blood Indians having less half Indian blood including minors shall be free from all restrictions. All lands, except homesteads, of said allottees enrolled as mixed-blood

Indians having half or more than half and less than three-quarters Indian blood shall be free from all restrictions All homesteads of said allottees enrolled as mixed-blood Indians having half or more than half Indian blood, including minors of such degrees of blood, and all allotted lands of enrolled full-bloods, and enrolled mixed-bloods of three-quarters or more Indian blood, including minors of such degrees of blood, shall not be subject to alienation, contract to sell, power of attorney, or any other incumbrance prior to April twenty-sixth, nineteen hundred and thirty-one, except that the Secretary of the Interior may remove such restrictions, wholly or in part, under such rules and regulations concerning terms of sale and disposal of the proceeds for the benefit of the respective Indians as he may prescribe. The Secretary of the Interior shall not be prohibited by this Act from continuing to remove restrictions as heretofore, and nothing herein shall be construed to impose restrictions removed from land by or under any law prior to the passage of this Act. No restriction of alienation shall be construed to prevent the exercise of the right of eminent domain in condemning rights of way for public purposes over allotted lands, and for such purposes sections 13 to 23 inclusive, of an Act entitled 'An act to grant the right of way through Oklahoma Territory and the Indian Territory to the Enid and Anadarko Railway Company, and for other purposes,' approved February twenty-eighth, 1902 (Thirty-second Statutes at Large, page forty-three), are hereby continued in force in the State of Oklahoma."

Goodman came within the class first named in this section, having less than one-half Indian blood, and it is claimed that his allotment was freed from all restrictions. If that section stood alone this contention might be sustained, but it must be construed with other sections contained in the same Act. Among them is section 2, which is as follows:

"SEC. 2. That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be leased by the allottee if an adult, or by guardian or curator under order of the proper Probate Court if a minor or incompetent, for a period not to exceed five years, without the privilege of renewal: Provided, That leases of restricted lands for oil, gas or other mining purposes, leases of restricted homesteads for more than one year, and leases of restricted lands for periods of more than five years, may be made, with the approval of the Secretary of the Interior, under rules and regulations pro-
45 vided by the Secretary of the Interior, and not otherwise: And Provided Further, That the jurisdiction of the Probate Courts of the State of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provisions, and the term minor or minors, as used in this Act, shall include all males under the age of twenty-one years and all females under the age of eighteen years."

When Congress included minors in section 1, it had the right in other sections of the law to decide who should be considered minors for the purposes of that section. This it did in the latter

part of section 2 above quoted. It is said that the declaration there made being in a proviso, is limited to the section in which it is found. Congress expressly declared that such was not its intention, for instead of saying, the term minor or minors, as used in this section, it said, "the term minor or minors, as used in this Act." The same definition of the word "minor" is found in section 4 of the Act of July, 1902 (32 Stat. 716).

The exclusive right to determine when Goodman became of age was in Congress, so far as his allotment was concerned. It declared that he should not become of age until he was 21. A law of Oklahoma which declared that he should become of age at 20 would be in conflict with the Act of Congress and would be void. So, any Act of the state which authorized any of its courts to determine that Goodman became of age when he was 20, or that at such age he had the rights of an adult, would be in contravention of the same law and would also be void. The decree of the District Court of Washington County emancipating Goodman was based upon the provisions of sections 73, 74 and 75, of Wilson's Revised Statutes of 1903, which were adopted as the law of the State of Oklahoma. These statutes could confer no jurisdiction upon that court to remove the disabilities of infancy under which Goodman labored at the time the decree was made so far as his allotment was concerned. That decree was therefore void, and being void, and Goodman being a minor when the lease was made to Overfield, the latter acquired nothing thereby. The construction of this Act came before the Supreme Court of Oklahoma in the case of Jefferson v. Winkler, 26 Okla. 653, s. c. 110 Pac. 755. In that case an Indian girl married when she was under 18, and while under that age conveyed her allotment. It was held that under the general law of Oklahoma the marriage emancipated her, but that this general law could not have effect in her case, in view of the provisions of the said Act of May 27, 1908, and that her conveyance was void.

Section 6 of the Act so far as here important, is as follows:

"SEC. 6. That the persons and property of minor allottees of the Five Civilized Tribes shall, except as otherwise specifically provided by law, be subject to the jurisdiction of the Probate Courts of the State of Oklahoma."

The appellants claim that the phrase "except as otherwise specially provided by law" refers to and includes the laws of
46 Oklahoma. It is apparent, however, that the law therein mentioned must be Federal law, and not State law. It cannot for a moment be supposed that Congress would take the trouble to place under the jurisdiction of a particular court the affairs of Indian minors, and in the same section provide that the State might by its action entirely nullify that provision.

Appellants also refer to Section 4, as strengthening their claims. That section reads as follows:

"That all land from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens

as though it were the property of other persons than allottees of the Five Civilized Tribes."

It is not necessary to decide here what the effect of that section is, nor what the full effect of Section 6 is. When it has been held that the State of Oklahoma cannot by its legislation reduce the age of majority from 21 to 20, enough has been decided to determine this case.

The last contention of the appellants is that as to 50 acres of the 80 acres in question, the lease to Overfield was valid, because that was the surplus allotment of Goodman, that as to it all restrictions had been removed prior to the passage of the Act of May 27, 1908, and because that Act in Section 1 provides that nothing therein shall be construed to impose restrictions removed from land by or under any law prior to the passage of the Act. The restrictions contained in the Act of July 1, 1902, under which this land was allotted, are found in Sections 13, 14 and 15, and are as follows:

SECTION 13. "Each member of said tribe shall, at the time of the selection of his allotment, designate as a homestead out of said allotment land equal in value to forty acres of the average allottable lands of the Cherokee Nation, as nearly as may be, which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the certificate of allotment."

SEC. 14. "Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken, or sold to secure or satisfy any debt or obligation, or be alienated by the allottee or his heirs, before the expiration of five years from the date of the ratification of this Act."

SEC. 15. "All lands allotted to the members of said tribe, except such land as is set aside to each for a homestead as herein provided, shall be alienable in five years after issuance of patent."

The appellants rely upon Section 14. The five years from the date of the ratification of the Act expired on August 7, 1907, but the five years from the date of the patent to Goodman have not yet expired. This question also has been before the Supreme
47 Court of Oklahoma in the case of Allen v. Oliver, 121 Pac. 226. The court there said on page 227:

"This policy could not be enforced and carried out if the allotments made under the act were to have been alienable in five years after the date of its ratification. None were made of that date, and many of them not until a much later date, and some, doubtless, were not made until after the expiration of the five years provided for in Section 14. Under these circumstances, it is clear that Section 14 would fail in providing the necessary period of protection which Congress has uniformly deemed necessary in parceling the lands among the members of these tribes; and there is absolutely no reason to conclude that a different policy was intended."

In 26 Opinions of Attorneys General, on page 354, is found the following statement:

"1. In regard to your first inquiry, I think the clear and specific

statements in Section 15 of the act of July 1, 1902, that 'all lands allotted to the members of said tribe, except such land as is set aside to each for a homestead as herein provided, shall be alienable in five years after issuance of patent,' should be taken as making definite and certain the interpretation to be given the negative expression in the previous section that such lands should not, among other things, 'be alienated by the allottee or his heirs before the expiration of five years from the date of the ratification of this act.' As the purpose of the five-year restriction upon alienation presumably was to keep the allottee in possession of his allotment for that length of time, so that he might acquire a knowledge of its value and uses and be better fitted to dispose of it, such purpose might be impaired and perhaps altogether defeated if the date from which the restrictive period was to commence were held to be that of the ratification of the act, as many members might not have received their allotments until long after the ratification of the act and in some cases not until after the expiration of five years from that date. It would be observed that by Section 13 the time when homesteads were to become alienable was fixed at 'not exceeding twenty-one years from the date of the certificate of allotment,' upon the receipt of which certificate by Section 21 of the act the allottee became entitled to be put in possession of his allotment."

The purpose of the government was to protect the Indian. If Section 14 had said that the land should not be alienated for five years, and Section 15 had said that it should not be alienated for ten years, can there be any doubt as to the construction which would have been given to those sections by a court? For the better protection of the Indian, it would be necessary to say that the restriction was for ten years and not for five years. Section 13 declares that homesteads shall be inalienable for twenty-one years from the date of the certificate of allotment. Section 14 says that "lands", and this on its face includes homesteads, shall not be
48 alienated before the expiration of five years. Could it be seriously argued that Section 14 should prevail over Section 13, so as to make a homestead alienable in five years?

The decree of the court below is affirmed with costs.

Filed August 5, 1912.

49 (*Decree.*)

And on the second day of September, A. D. 1912, in the record of the proceedings of said Circuit Court of Appeals is a decree in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, September Term, 1912.

MONDAY, September 2, 1912.

No. 3749.

A. A. TRUSKETT and W. O. TRUSKETT, Appellants,
vs.
FRED D. CLOSSER.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that Fred D. Closser have and recover against A. A. Truskett and W. O. Truskett the sum of twenty dollars for his costs herein and have execution therefor.

September 2, 1912.

(*Petition for Appeal to Supreme Court U. S.*)

And on the eighth day of March, A. D. 1913, a petition for allowance of an appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Eighth Circuit.

A. A. TRUSKETT and W. O. TRUSKETT, Appellants,
vs.
FRED D. CLOSSER, Appellee.

Petition for Appeal to the Supreme Court of the United States.

50 The above mentioned appellants, A. A. Truskett and W. O. Truskett, respectfully show that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Eighth Circuit, and that a judgment has therein been rendered on the 5th day of August, 1912, affirming the decree of the Circuit Court of the United States for the Eastern District of Oklahoma, and its successor, the District Court of the United States for the Eastern District of Oklahoma; that the matter in controversy in said suit exceeds One Thousand ($1,000) Dollars, besides costs, and that this cause is one in which the United States Circuit Court

of Appeals for the Eighth Circuit has not final jurisdiction, and that it is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Wherefore the said appellants pray that an appeal be allowed them in the above entitled cause directing the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the said appellants, may be reviewed and if error be found, corrected according to the laws and customs of the United States.

JAMES A. VEASEY,
L. A. ROWLAND,
Solicitors for Appellants.

(Endorsed:) No. 3749. A. A. Truskett, et al., Appellants, vs. Fred D. Closser. Petition for allowance of an appeal to the Supreme Court of the United States. Filed Mar. 8, 1913, John D. Jordan, Clerk.

(*Assignment of Errors on Appeal to Supreme Court U. S.*)

And on the eighth day of March, A. D. 1913, an assignment of errors on appeal to Supreme Court of the United States was filed in said cause, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

51 A. A. TRUSKETT and W. O. TRUSKETT, Appellants,
vs.
FRED D. CLOSSER, Appellee.

Assignments of Error.

Now come the appellants, A. A. Truskett and W. O. Truskett, by their solicitors, James A. Veasey and L. A. Rowland, and say that in the record and proceedings herein there is manifest error and that the United States Circuit Court of Appeals for the Eighth Circuit, erred in this, to-wit:

First.

In holding and deciding that the Act of Congress approved May 27, 1908 (35 Stat. L. 312) deprived the District Courts of Oklahoma of the power and jurisdiction to confer the rights of majority on Cherokee Indian allottees less than twenty-one years of age in the case of males, and less than eighteen years of age in the case of females.

Second.

In holding and deciding that the decree of the District Court of Washington County, Oklahoma, entered on the 12th day of October,

1909, did not operate to confer the rights of majority on Robert F. Goodman, the lessor through whom appellants claimed title to an oil and gas mining lease covering the allotment of said Goodman.

Third.

In holding and deciding that the oil and gas mining lease claimed by appellants in this action, was void and inferior to the oil and gas mining lease claimed by the appellee.

Fourth.

In holding and deciding that the restrictions on alienation as to fifty (50) acres of the land covered by such lease expired five years from the delivery of patent therefor, and not within five years from the ratification of the so-called Cherokee treaty.

Fifth.

In failing to hold and decide that the oil and gas mining lease claimed by the appellants was valid and that such lease of the appellants was superior to the lease of the appellee.

52

Sixth.

In failing to hold and decide that in case of fifty acres of the land covered by appellants' lease, to-wit: the surplus portion of the allotment of Robert F. Goodman, all restrictions on the alienation of such land expired five years from the ratification of the so-called Cherokee treaty and that accordingly the lease of appellants as to such fifty acres was valid and superior to the lease of appellee covering such land.

Seventh.

In holding and deciding that appellants' demurrer to appellee's bill should be overruled and in holding and deciding that judgment should be given against the appellants as prayed in appellee's bill.

Wherefore, the appellants pray that the decree entered herein by the Circuit Court of Appeals for the Eighth Circuit on the 5th day of August, 1912, be reversed and that the appellants may have an adjudication herein and a decree in their favor as herein specified.

JAMES A. VEASEY,
L. A. ROWLAND,
Solicitors for Appellants.

(Endorsed:) No. 3749. A. A. Truskett, et al., Appellants, vs. Fred D. Closser. Assignment of Errors on appeal to Supreme Court of the United States. Filed Mar. 8, 1913, John D. Jordan, Clerk.

(Affidavit as to Amount in Controversy.)

And on the eighth day of March, A. D. 1913, an affidavit as to amount in controversy was filed in said cause, in the words and figures following, to-wit:

In the Supreme Court of the United States.

A. A. TRUSKETT and W. O. TRUSKETT, Appellants,
vs.
FRED D. CLOSSER, Appellee.

Affidavit as to Amount in Controversy.

STATE OF KANSAS,
Montgomery County, ss:

53 W. O. Truskett, of said County and State, being duly sworn, on his oath says that he is a person of lawful age, and one of the appellants in the above entitled cause; that said cause involves the title to an oil and gas mining lease and to producing gas wells thereon; that said lease, wells and the material in such wells are worth to exceed the sum of $2000, and that the matters referred to are in controversy in this suit and the amount so in controversy, exclusive of interest and costs, exceeds said sum of Two Thousand ($2000) Dollars.

W. O. TRUSKETT.

Subscribed and sworn to before me this 7 day of January, 1913

[SEAL.] E. L. SHARPLESS,
Notary Public.

My commission expires Ap'l 5, 1915.

(Endorsed:) No. 3749. A. A. Truskett, et al., Appellants, vs. Fred D. Closser. Affidavit as to amount in controversy. Filed Mar. 8, 1913, John D. Jordan, Clerk.

(Bond on Appeal to Supreme Court U. S.)

And on the eighth day of March, A. D. 1913, a bond on appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

A. A. TRUSKETT and W. O. TRUSKETT, Appellants,
vs.
FRED D. CLOSSER, Appellee.

Appeal Bond.

Know All Men By These Presents, that we, A. A. Truskett and W. O. Truskett, of the County of Montgomery, State of Kansas, as principals, and the Southwestern Surety Insurance Company, of Durant, Oklahoma, as surety, are held and firmly bound unto Fred D. Closser in the sum of One Thousand ($1000.00) Dollars, to the payment of which to the said Fred D. Closser, we do
54 hereby bind ourselves and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 19th day of February, 1913.

Whereas, the appellants in the above entitled suit have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause, in the Circuit Court of Appeals for the Eighth Circuit, on the 5th day of August, 1912,

Now Therefore, the condition of this obligation is such that if the said appellants shall prosecute said appeal to effect and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be null and void, otherwise to remain in full force and virtue.

A. A. TRUSKETT.
W. O. TRUSKETT.
SOUTHWESTERN SURETY INSURANCE COMPANY, [SEAL.]
By J. F. McILHENY,
Att'y-in-fact.

Witnesses:
E. P. ARCHER.
B. D. JONES.
HARRIETTE WARFEL.
A. C. MERRILL.
M. SMITH.
R. L. MAGRUDER.

The Foregoing Bond is approved this 8th day of March, 1913.

WALTER H. SANBORN,
United States Circuit Judge, Eighth Circuit.

(Endorsed:) No. 3749. A. A. Truskett, et al., Appellants, vs. Fred D. Closser. Appeal bond on appeal to Supreme Court, U. S. Filed Mar. 8, 1913, John D. Jordan, Clerk.

(Order Allowing Appeal to Supreme Court U. S., etc.)

And on the eighth day of March, A. D. 1913, an order allowing an appeal to the Supreme Court of the United States, etc., was filed in said cause, in the words and figures following, to-wit:

55 In the United States Circuit Court of Appeals for the Eighth Circuit.

A. A. TRUSKETT and W. O. TRUSKETT, Appellants,
vs.
FRED D. CLOSSER, Appellee.

Order Allowing Appeal.

It is hereby ordered that the appeal in the above entitled cause to the Supreme Court of the United States, be and is hereby allowed as prayed, and the appellants shall give their appeal bond in the sum of One Thousand dollars.

WALTER H. SANBORN,
Senior Circuit Judge.

March 8, 1913.

(Endorsed:) No. 3749. A. A. Truskett, et al., Appellants, vs. Fred D. Closser. Order fixing amount of appeal bond and allowing appeal to Supreme Court, U. S. Filed Mar. 8, 1913, John D. Jordan, Clerk.

(Citation on Appeal to Supreme Court U. S.)

And on the twenty-first day of March, A. D. 1913, the citation on the appeal to the Supreme Court of the United States was filed in said cause, the original of which with acknowledgment of service endorsed thereon is hereto attached and herewith returned:

56 UNITED STATES OF AMERICA:

To Fred D. Closser, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, in the District of Columbia, thirty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein A. A. Truskett and W. O. Truskett are Appellants and you are Appellee, to show cause, if any there be, why the decree rendered against the said appellants as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Walter H. Sanborn, Presiding Judge of

the United States Circuit Court of Appeals for the Eighth Circuit, this eighth day of March, A. D. 1913

WALTER H. SANBORN,
Presiding Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

Service of above citation acknowledged this 11th day of March, 1913.

EUGENE MACKEY AND
STANFORD & STANFORD,
Solicitors for Fred D. Closser.

57 [Endorsed:] Supreme Court of the U. S., October Term, 1912. No. —. A. A. Truskett, et al. Appellants, vs. Fred D. Closser. Citation. Filed Mar. 21, 1913. John D. Jordan, Clerk.

58 *(Clerk's Certificate.)*

United States Circuit Court of Appeals. Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma as prepared, printed and certified by the Clerk of said District Court to the United States Circuit Court of Appeals in pursuance of the Act of Congress, approved February 13, 1911, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, in a certain cause in said Court wherein A. A. Truskett and W. O. Truskett are Appellants and Fred D. Closser is Appellee, No. 3749, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with acknowledgment of service endorsed thereon is hereto attached and herewith returned.

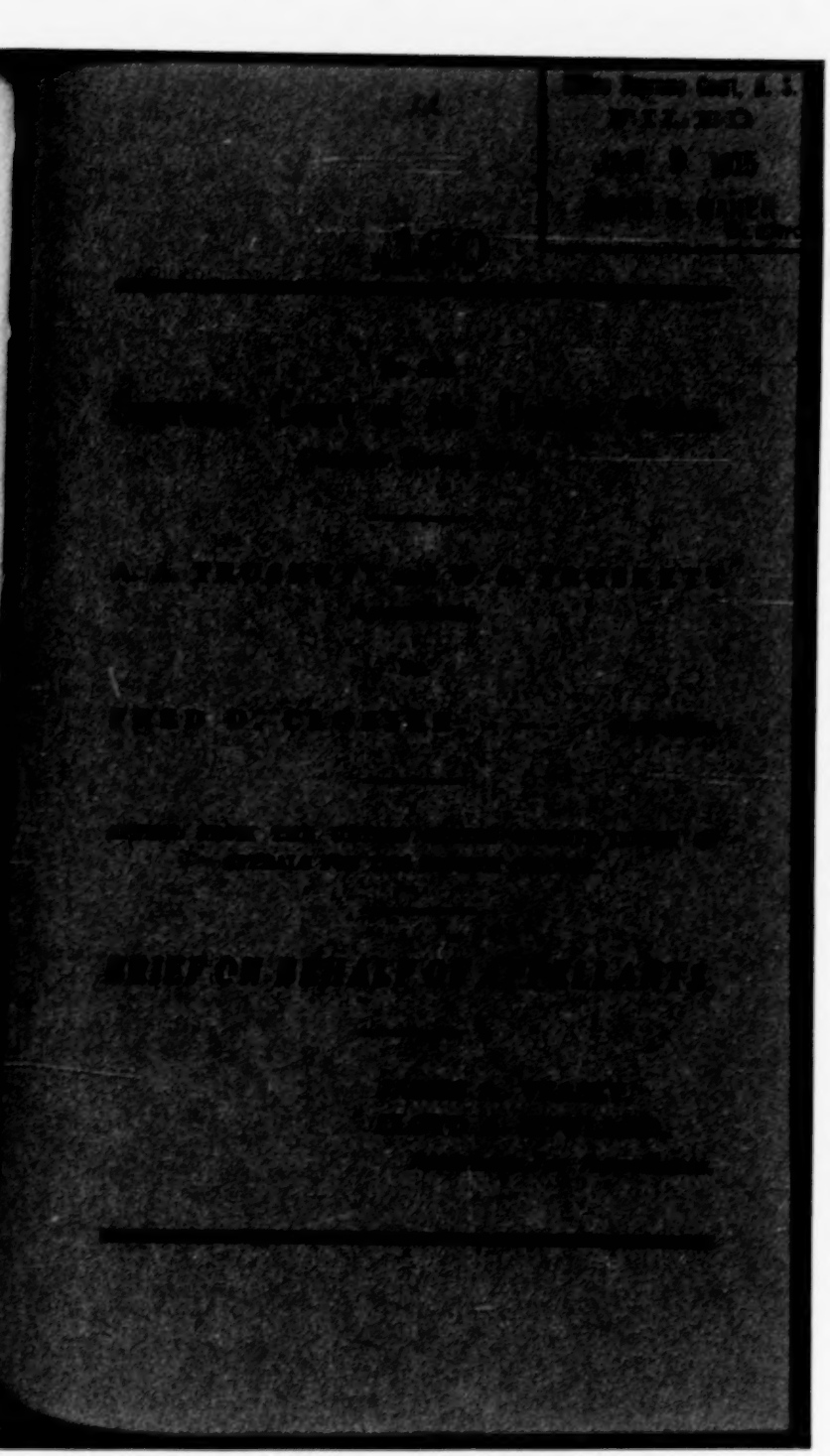
I do further certify that on the fourth day of November, A. D. 1912, a mandate was issued out of said Circuit Court of Appeals in said cause, directed to the Judges of the District Court of the United States for the Eastern District of Oklahoma.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-first day of March, A. D. 1913.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 23,662. U. S. Circuit Court Appeals, 8th Circuit. Term No. 160. A. A. Truskett and W. O. Truskett, appellants, vs. Fred D. Closser. Filed May 1st, 1913. File No. 23,662.



INDEX

Page

STATEMENT OF CASE..... 1

Decree of District Court of Washington County, Oklahoma, conferring majority rights upon Robert F. Goodman.. 3

Grounds of demurrer of appellants to the prayer of appellee that lease of appellants be declared null and void..... 5

Section 1, Act of May 27, 1908 (35 Stat. L. 312).....7, 30

Excerpts from opinion of Circuit Court of Appeals, citing Section 2 of Act of May 27, 1908, supra, in deciding this cause in the court below.....8, 35

Summary of the contentions of the respective parties to this suit. 10

ASSIGNMENT OF ERRORS.....13

ARGUMENT. 15

Restating the first three assignments, appellants assert that the Act of May 27, 1908, removed all restrictions against the alienation of allotments of mixed-blood Indians having less than half Indian blood, including minors; that Goodman was a minor Cherokee Indian of less than half Indian blood, and that, accordingly, all restrictions against the alienation of his land were removed by said act, etc.....16

Two considerations which are preliminary to an analysis of the Act of Congress (of May 27, 1908).....16

Section 21 of Oklahoma Enabling Act (34 Stat. L. 378).....17

Section 2 of the Schedule of the Constitution of Oklahoma...17

Section 733, Wilson's Digest.....18

Sections 73, 74 and 75, Wilson's Digest.....18

Excerpt from Brown v. Wheelock, (Tex.) 12 S. W. 111.....20

Tiger v. West. Inv. Co., 221 U. S. 286.....21, 23, 37

Section 14, Cherokee Treaty, Act of July 1, 1902, (32 Stat. L. 716). 22

Bowling v. U. S., 233 U. S. 528.....23

Excerpts from Act of May 27, 1908 (35 Stat. L. 312), italicizing significant phrases sustaining contentions of appellants.24

Proviso of Section 2 of Act of May 27, 1908, supra.....34

INDEX—CONTINUED.

Page

Excerpt from opinion of this court in U. S. v. Nichols Lumber Co., 234 U. S. 245.....36, 37

Contentions appellee must sustain in order to prevail in this cause.....37

Excerpt from Section 4, Original Creek Agreement (31 Stat. L. 861).....39

Excerpt from Act of April 21, 1904 (33 Stat. L. 189).....39

Excerpt from Section 22, Act of April 26, 1906 (34 Stat. L. 137).....40

Discussion of Section 5, Act of May 27, 1908, supra.....43

Discussion of Section 6, Act of May 27, 1908, supra.....44

The case of Jefferson v. Winkler, 26 Okla. 653, cited by Circuit Court of Appeals, discussed and distinguished.....46

Summary of our comment on the clause in Section 6, Act of May 27, 1908, supra, "except as otherwise specifically provided by law".....50

Propositions maintained by appellants from a summary of Sections 1, 2 and 6 of Act of May 27, 1908, supra.....57

Contentions of appellants from a consideration of the Act of May 27, 1908, supra, summarized in six propositions, and upon which appellants rely in this cause.....59

Conclusion.....63

CASES CITED.

Bowling v. U. S., 233 U. S. 528.....23
Jefferson v. Winkler, (Okla.) 110 Pac. 755.....46
Tiger v. West. Inv. Co., 221 U. S. 286.....21, 23, 36, 37
U. S. v. Nichols Lbr. Co., 234 U. S. 245.....36

In the

SUPREME COURT OF THE UNITED STATES.

October Term, 1914.

No. . . . .

A. A. TRUSKETT and W. O. TRUSKETT

Appellants,

vs.

FRED D. CLOSSER, - - - - *Appellee.*

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF *on* BEHALF *of* APPELLANTS

Statement of the Case.

This suit was brought by the appellee, who was the plaintiff below, to quiet his title with respect to an oil and gas mining lease against the claim of the appellants to a lease for oil and gas mining purposes, covering the same premises. The appellee in his bill set up in full the title claimed by him and

the title claimed by the appellants, as well. Appellants demurred thereto, under the practice then prevailing, which demurrer was overruled by the trial court. Appellants refusing to plead further, a decree was entered against appellants and in favor of the appellee, quieting the title of the appellee with respect to the oil and gas mining lease claimed by him, against any claim asserted by appellants. From this decree an appeal was prosecuted to the Circuit Court of Appeals for the Eighth Circuit and the decree of the trial court was there affirmed.

As this cause is before the court on the allegations of appellee's bill, the material parts thereof will now be referred to:

The lands in controversy were a part of the common domain of the Cherokee Tribe of Indians, and on the 31st day of March, 1909, such lands were conveyed to one Robert F. Goodman, a member of the tribe, by patent of the Cherokee Nation, duly approved by the Secretary of the Interior. These lands were awarded to Goodman as his allotment in the Cherokee Nation, fifty acres thereof having been allotted and patented to him as his so-called "surplus" allotment, and the remaining thirty acres thereof having been allotted and patented to Goodman as his homestead allotment. (See Rec., pp. 2, 10, 11.) Robert F. Goodman was a male Cherokee of one-eighth Indian blood and seven-eighths white blood, and did not attain the full age of twenty-one years until September 25, 1910. (Rec., p. 2.)

October 12, 1909, and in a proceeding brought on behalf of Goodman by his next friend, C. B. Goodman, the District Court of Washington County, Oklahoma, entered the following decree (Rec., pp. 2, 3, 13, 14):

> "Now on this 12th day of October, 1909, the same being one of the days of the regular September, 1909, term of said court, this matter came on for hearing upon the verified application and petition of Robert F. Goodman by his next friend and mother C. B. Goodman, to confer upon him the rights of majority concerning contracts, and to authorize and empower him to transact business in general with the same effect as if such business were transacted by a person over the age of twenty-one years; and it appearing to the court that due and legal notice of the filing of said petition has been given by publication for two consecutive weeks prior to the filing thereof in a newspaper printed in said county; and the court having heard evidence in open court and being fully advised in the premises, finds:
>
> That said petitioner is of the age of twenty years and is of sound mind and fully able and competent to transact his own affairs; and that the interests of said petitioner will be greatly and materially promoted by the granting of said petition and application; that the said Robert F. Goodman is now and has been for more than one year next before the filing of said petition a *bona fide* resident of said county and state.
>
> It is therefore ordered, adjudged and decreed by the court that the rights of majority concerning contracts be, and the same are here-

by conferred upon the said Robert F. Goodman, and he is hereby authorized and empowered to transact business in general with the same effect as if such business were transacted by a person over the age of twenty-one years.

JOHN J. SHEA, *Judge.*"

This decree conferred, or sought to confer, upon Goodman full majority rights, and in pursuance thereof, and on the 20th day of October, 1909, Goodman, acting on his own behalf, granted to one Overfield a lease for oil and gas mining purposes, covering his entire allotment in the Cherokee Indian Nation, the term of this lease being for fifteen years from its date and as long thereafter as oil or gas should be found in paying quantities. (Rec., p. 3.) A copy of the lease was made part of the petition and application, at pages 14 and 15 of the record. Thereafter this lease passed to the appellants by assignment, and constitutes the basis of the title which appellants are now asserting in this cause. The lease was duly recorded with the Register of Deeds of Washington County, Oklahoma, the county wherein the lands were situate, October 21, 1909, and prior to the acquiring of title by the appellee, as will later appear. (Rec., p. 16.)

September 14, 1910, which was subsequent to the decree conferring majority rights, already referred to, and subsequent to the execution and recording of the lease upon which appellants rely, one Hugh Branson, the alleged legal guardian of Good-

man, granted a second lease for oil and gas mining purposes, covering these lands, to the appellee, which lease was made by this guardian on behalf of Goodman, who is alleged to be a minor at that time. This lease was both authorized and confirmed by order of the County Court for Nowata County, Oklahoma, the court which had probate jurisdiction of the person and estate of Goodman, if, in fact, at this time, Goodman was a minor. This is the lease upon which the appellee relies. (Rec., pp. 4, 5.)

The prayer of appellee's bill was that appellants' lease be declared null and void and a cloud upon the title of the appellee, and that appellee's title with respect to the oil and gas mining lease set forth by him be quieted as against the claim of the appellants, based upon the lease of October 20, 1909, already referred to.

The foregoing is a sufficient statement of the material allegations set forth in appellee's bill, and as appellants' demurrer thereto in specific terms sets out the propositions of law which are involved in this case, the grounds of demurrer will be set out herein in full. The same are as follows:

> "*First.* Because there is in full force and operation, in the State of Oklahoma, a law which confers upon the District Courts of that state full power and jurisdiction to remove the disabilities of minority from all male citizens of the State of Oklahoma under the age of twenty-one years, and female citizens under the age of eighteen years, such disabilities to be

removed in the manner provided for in said law.

Second. Because said law is operative upon members and citizens of the Five Civilized Tribes, with the same force and effect as said law is operative upon any other citizen of the State of Oklahoma.

Third. Because Robert F. Goodman, the allottee referred to in plaintiff's bill, is alleged to be of such degree of Indian blood that all restrictions on the alienation of his allotment in the Oklahoma Nation were removed by the Act of Congress, approved May 27th, 1908; and as all restrictions on the land of said Robert F. Goodman were removed prior to the decree conferring majority rights on him, as alleged in plaintiff's bill, said Robert F. Goodman was in the same class as any other citizen of the State of Oklahoma with respect to his civil, political and property rights.

Fourth. Because said law of the State of Oklahoma, authorizing said District Court to confer majority rights, in the manner therein provided, does not contravene the Act of Congress approved May 27th, 1908, nor does said law of the State of Oklahoma contravene any other law of the Congress of the United States.

Fifth. Because the exhibits attached to complainant's bill discloses that a decree was entered by the District Court for Washington County, Oklahoma, removing the disabilities of minority of Robert F. Goodman, which said decree is not subject to attack in the manner attempted in complainant's bill.

Sixth. Because these defendants procured a valid and enforcible lease for oil and gas min-

ing purposes from said Robert F. Goodman after the rights of majority were conferred upon him, as shown by said bill, which said lease is paramount and superior to the lease relied upon by complainant herein."

The decision of this cause will depend upon the construction of an Act of Congress approved May 27, 1908 (35 Stat. L. 312). As already stated, it is alleged that Goodman was a one-eighth degree Cherokee Indian by blood, and did not attain the age of twenty-one years until September 25, 1910. Accordingly, he was a minor when the Act of May 27, 1908, was approved. Section 1 of this act provides:

> "That from and after sixty days from the date of this act, the *status* of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as respects restrictions on alienation or encumbrance, be as follows: *All lands,* including homesteads, of said allottees enrolled as intermarried whites, as freedmen, *and as mixed-blood Indians, having less than half Indian blood, including minors,* shall be free from *all restrictions.*"

It will be observed that minors are specifically included within the language of this provision, and it is our contention, therefore, that as Goodman was a mixed-blood Indian having less than half Indian blood, his entire allotment was free from all restrictions, which circumstance subjected his allotment to the operation of all laws of the State of Oklahoma. Among the laws of the State of Oklahoma to which

Goodman and his allotment became thus subjected, was a statute which authorized district courts of the state to confer full rights of majority on minors by the same proceeding which was taken by Goodman.

It is to be observed that the decision of the Circuit Court of Appeals in this cause is based entirely upon the following portion of section 2 of the act under consideration, namely:

> "And the term minor or minors, as used in this act, shall include all males under the age of twenty-one years and all females under the age of eighteen years."

The Circuit Court of Appeals, in its decision of this cause, said:

> "Goodman came within the class first named in this section, having less than one-half Indian blood, and it is claimed that his allotment was freed from all restrictions. If that section stood alone this contention might be sustained, but it must be construed with other sections contained in the same act. Among them is section 2, which is as follows:
>
> > '*Sec. 2.* That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be leased by the allottee if an adult, or by guardian or curator under order of the proper Probate Court if a minor or incompetent, for a period not to exceed five years, without the privilege of renewal: *Provided*, That leases of restricted lands for oil, gas or other mining purposes, leases of restricted

homesteads for more than one year, and leases of restricted lands for periods of more than five years, may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior, and not otherwise; And *Provided Further*, That the jurisdiction of the Probate Courts of the State of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provisions, and the term minor or minors, as used in this act, shall include all males under the age of twenty-one years and all females under the age of eighteen years.'

When Congress included minors in section 1, it had the right in other sections of the law to decide who should be considered minors for the purposes of that section. This it did in the latter part of section 2, above quoted. It is said that the declaration there made being in a proviso, is limited to the section in which it is found. Congress expressly declared that such was not its intention, for instead of saying, the term minor or minors, as used in this section, it said, 'the term minor or minors, as used in this act.' The same definition of the word 'minor' is found in section 4 of the Act of July, 1902 (32 Stat. 716).

The exclusive right to determine when Goodman became of age was in Congress, so far as his allotment was concerned. It declared that he should not become of age until he was 21. A law of Oklahoma which declared that he should become of age at 20 would be in conflict with the Act of Congress, and would be void. So, any act of the state which authorized any

of its courts to determine that Goodman became of age when he was 20, or that at such age he had the rights of an adult, would be in contravention of the same law and would also be void. The decree of the District Court of Washington County emancipating Goodman was based upon the provisions of sections 73, 74 and 75, of Wilson's Revised Statutes of 1903, which were adopted as the law of the State of Oklahoma. These statutes could confer no jurisdiction upon that court to remove the disabilities of infancy under which Goodman labored at the time the decree was made so far as his allotment was concerned. That decree was therefore void, and being void, and Goodman being a minor when the lease was made to Overfield, the latter acquired nothing thereby. The construction of this act came before the Supreme Court of Oklahoma in the case of *Jefferson* v. *Winkler*, 26 Okla. 653, s. c. 110 Pac. 755. In that case an Indian girl married when she was under 18, and while under that age conveyed her allotment. It was held that under the general law of Oklahoma the marriage emancipated her, but that this general law could not have effect in her case, in view of the provisions of the said Act of May 27, 1908, and that her conveyance was void."

As the language of the Circuit Court of Appeals no doubt sufficiently expresses the contention which will be made by the appellee before this court, the respective contentions of the parties to this suit may be summarized as follows:

(a) Goodman, being a mixed-blood Cherokee of less than half Indian blood, and being a minor, his

allotment was squarely within the language of section 1 of the Act of May 27, 1908, which is to the effect that all restrictions are removed from all lands, including homesteads, of mixed-blood Indians of less than half Indian blood, *including minors.* Since all restrictions on the alienation of this land were thereby removed, the land itself became subject to all of the laws of the State of Oklahoma. That among these laws to which this allotment was thus subjected was the statute authorizing the District Courts of Oklahoma to confer majority rights. These rights were conferred upon Goodman by the decree of October 12, 1909, in consequence of which he was fully qualified to execute the lease of October 20, 1909, on his own behalf.

(b) The appellee contends, however, that the same act which we rely upon in asserting that all restrictions were removed from Goodman's lands also specifically provides that the term "minor" or "minors," as used in the act, shall include all males under the age of twenty-one years; that this provision of the act finally and conclusively fixed the minority of all members of the Five Civilized Tribes; that under no circumstances would a law of the State of Oklahoma be permitted to so operate as to reduce this period of minority; that inasmuch as Goodman was under this arbitrary age of twenty-

one years, fixed by the act, when the decree conferring majority rights was entered, and when the lease relied upon by appellants was made, these transactions offend against the Act of Congress, and both the decree conferring majority rights and the lease are void.

ASSIGNMENT *of* ERRORS.

(Rec., pp. 43-44.)

First.

In holding and deciding that the Act of Congress approved May 27, 1908 (35 Stat. L. 312), deprived the District Courts of Oklahoma of the power and jurisdiction to confer the rights of majority on Cherokee Indian allottees less than twenty-one years of age in the case of males, and less than eighteen years of age in the case of females.

Second.

In holding and deciding that the decree of the District Court of Washington County, Oklahoma, entered on the 12th day of October, 1909, did not operate to confer the rights of majority on Robert F. Goodman, the lessor through whom appellants claimed title to an oil and gas mining lease covering the allotment of said Goodman.

Third.

In holding and deciding that the oil and gas mining lease claimed by appellants in this action, was void and inferior to the oil and gas mining lease claimed by the appellee.

Fourth.

In holding and deciding that the restrictions on alienation as to fifty (50) acres of the land covered

by such lease expired five years from the delivery of patent therefor, and not within five years from the ratification of the so-called Cherokee Treaty.

Fifth.

In failing to hold and decide that the oil and gas mining lease claimed by the appellants was valid and that such lease of the appellants was superior to the lease of the appellee.

Sixth.

In failing to hold and decide that in case of fifty acres of the land covered by appellants' lease, to-wit, the surplus portion of the allotment of Robert F. Goodman, all restrictions on the alienation of such land expired five years from the ratification of the so-called Cherokee Treaty and that accordingly the lease of appellants as to such fifty acres was valid and superior to the lease of appellee covering such land.

Seventh.

In holding and deciding that appellants' demurrer to appellee's bill should be overruled, and in holding and deciding that judgment should be given against the appellants as prayed in appellee's bill.

ARGUMENT.

The first three assignments of error are so related that they will be considered in a single discussion. Affirmatively stated, these errors are as follows:

First. **The Circuit Court of Appeals for the Eighth Circuit erred in holding and deciding that the Act of Congress approved May 27, 1908 (35 Stat. L. 312), deprived the District Courts of Oklahoma of the power and jurisdiction to confer the rights of majority on Cherokee Indian allottees less than twenty-one years of age, in the case of males, and less than eighteen years of age, in the case of females.**

Second. **The Circuit Court of Appeals for the Eighth Circuit erred in holding and deciding that the decree of the District Court of Washington County, Oklahoma, entered on the 12th day of October, 1909, did not operate to confer the rights of majority on Robert F. Goodman, the lessor through whom appellants claimed title to an oil and gas mining lease covering the allotment of said Goodman.**

Third. **The Circuit Court of Appeals for the Eighth Circuit erred in holding and deciding that the oil and gas mining lease claimed by appellants in this action was void and inferior to the oil and gas mining lease claimed by the appellee.**

Re-stating these three assignments of error in a single proposition, we assert that the Act of May 27, 1908, removed all restrictions against the alienation of allotments of mixed-blood Indians having less than half Indian blood, *including minors;* that Robert F. Goodman was a minor Cherokee Indian of less than half Indian blood, and that, accordingly, all restrictions against the alienation of his land were removed by said act; that, in consequence of this, any general law in force in the State of Oklahoma operated with respect to Goodman and with respect to his allotment, among which laws was a statute authorizing the District Courts of said state to confer the rights of majority on males under the age of twenty-one years; that the law applied to Goodman and applied to his allotment, as a result of which the decree conferring majority rights upon Goodman, entered October 12, 1909, was effective in law, and the lease relied upon by the appellants made in pursuance thereof on the 20th day of October, 1909, is in all respects valid.

While it is true that the decision of this case depends primarily on the construction of the Act of May 27, 1908, there are two considerations which are preliminary to an analysis of the Act of Congress:

(a) There was in force throughout the State of Oklahoma October 12, 1909, a general law of that state, which authorized the District Courts

therein to confer majority rights on males under the age of twenty-one years and on females under the age of eighteen years.

(b) There is a distinction between those disabilities which attach to a minor as an individual and those disabilities which restrain an Indian in the alienation of his allotment. In the first case, the disability is personal and affects the civil status of the individual; in the second case, the disability has no necessary reference to the individual, but is a restraint or restriction which is laid upon and attaches to the land itself.

Discussing these propositions in the order in which they are stated, we observe that section 21 of the Oklahoma Enabling Act (34 Stat. L. 378), provides:

> "All laws in force in the Territory of Oklahoma at the time of the admission of said state into the Union shall be in force throughout said state, except as modified or changed by this act, or by the constitution of the state."

Section 2 of the Schedule of the Constitution of Oklahoma provides:

> "All laws in force in the Territory of Oklahoma at the time of the admission of the state into the Union, which are not repugnant to this constitution and which are not locally inapplicable, shall be extended to and remain in force in the State of Oklahoma until they expire by their own limitation or are altered or repealed by law."

At the time of the admission of Oklahoma into the Union, the following law was in force in such state:

> "Minors are: *First,* males under twenty-one years of age; *second,* females under eighteen years of age." (Sec. 733, Wilson's Digest.)

At the same time, there were in force and effect in Oklahoma Territory the following further provisions of law:

> "*Sec. 73.* That the District Courts for the several counties of this territory shall have authority to confer upon minors the rights of majority *concerning contract,* and to authorize and empower any person who is a resident of the county, and under the age of twenty-one years, to transact business in general and any business specified and with the same effect as if such act or thing done by a person above that age; and every act done by a person so authorized shall have the same force and effect in law as if done by persons at the age of majority.
>
> *Sec. 74.* Any minor desiring to obtain the rights of majority for the purposes named in section 3832 may, by his or her next friend, file a petition in the District Court of the county in which such minor shall reside, setting forth the age of the minor petitioner and that said petitioner is then and has been a *bona fide* resident of such county for at least one year next before the filing of the petition, and the cause for which the petitioner seeks to obtain the rights of majority. And the District Court being satisfied that the said petitioner is a person of sound mind and able to transact his or her affairs, and that the interests of the petitioner will be there-

by promoted, may, in its discretion, order and decree that the petitioner be empowered to exercise the rights of majority for all purposes mentioned in this act.

Sec. 75. The petition mentioned in the foregoing section shall not be filed until notice of such application shall have been given by publication in some newspaper printed in the county where such petition is to be filed, and if there be none, then in some newspaper having a general circulation in the county, for two consecutive weeks prior to the filing of the said petition." (Wilson's Digest.)

Sections 73, 74 and 75 of Wilson's Revised Statutes of Oklahoma, as copied above, were not modified nor changed by the Enabling Act or by the Constitution of Oklahoma, nor were these laws locally inapplicable, nor were they altered or repealed prior to the 12th day of October, 1909. It follows, therefore, that among the laws put in force in the State of Oklahoma by the Enabling Act and by the Constitution of the State of Oklahoma, was that statute which authorized the District Courts of the state to confer the rights of majority concerning contracts on any resident of the county wherein the court sat, under the age of twenty-one years.

This statute is not peculiar to the State of Oklahoma, for similar provisions appear in the Statutes of Texas, Arkansas and Kansas, which adjoin Oklahoma. In *Brown* v. *Wheelock,* (Tex.) 12 S. W. 111, the court of that state had occasion to define and

explain the nature of an order removing the disabilities of a minor under the Texas statute. It was here said:

> "It (the decree conferring majority rights) acts merely upon the *status* of the applicant, enlarges his capacity as a free agent, and, as to all matters not political, places him upon the plane of persons who have attained their majority. * * * At what age the disabilities of minority shall cease is clearly a matter within legislative discretion, and we see no reason why it is not within the lawmaking power to fix the period of minority by general law, *and also to provide for the removal of such disabilities in special cases at a shorter period.*"

Such was exactly the situation in Oklahoma upon the admission of the state and at the time of the decree of October 12, 1909. The legislature had fixed the period of minority by general law and had also provided for the removal of these disabilities in special cases, at a shorter period. This brings us to the consideration of the exact nature of the disabilities which are important in this case.

It is fundamental, of course, that the question of minority or majority is one which affects only the civil and personal status of the individual concerned. Now Goodman was made a citizen of the United States by the Act of March 3, 1901. (31 Stat. L. 1447.) He was declared to be a citizen of the State of Oklahoma by section 2 of the Oklahoma Enabling Act, *supra.*

We are not unmindful of the decisions of this court collated in *Tiger* v. *Western Investment Company*, 221 U. S. Rep. 286. It is there held that, although an Indian may be a citizen of the United States and a citizen of the State of Oklahoma, this circumstance does not prevent governmental authority from placing such restraints upon the conduct or property of citizens as is necessary for the general good. Conceding this to be the law, we still contend that when Congress declared these Indians to be citizens of the United States and of the State of Oklahoma, it thereby released to the state the right to fix their status as adults or minors. It is true, of course, that, even then, Congress could control the property of these Indians, but certainly not their person to the extent of fixing the ages of minority.

If this reasoning is sound, the State of Oklahoma, at all times after its admission, possessed the power to fix the status of Goodman as an adult or as a minor. Clearly enough, if, under the laws of the state, he was an adult, he could contract with respect to all personal property of which he was possessed, provided this was not tribal property. Moreover, and for the same reason, he could contract with respect to any real estate owned by him which came to him under the ordinary laws, instead of coming to him as a member of an Indian tribe. *If these things be true, then there is just one single circumstance which interfered with the validity of*

appellants' lease, namely, a restriction imposed upon the lands covered thereby; that is, a restriction or a restraint on alienation that was laid upon or attached to the land itself, as distinguished from a disability attaching to Goodman personally.

In the interval between the admission of the state and the Act of May 27, 1908, this was the precise situation of Goodman. If the decree of October 12, 1909, had been entered the day after the state was admitted, he would have been qualified to convey his personal property, of the nature suggested above, and would have been qualified to convey such real estate as he might have acquired in the ordinary manner, and not by virtue of his Indian blood or citizenship. *In this interval, however, he could not convey his allotment, not for the reason that he was a minor, but for the reason that there was a positive restriction which attached to his allotment as such, and which prevented its alienation.*

The Cherokee Treaty under which these lands were allotted, which was an Act of Congress approved July 1, 1902, and thereafter ratified by the Cherokee Tribe (32 Stat. L. 716), provides:

> "*Sec. 14.* Lands allotted to citizens shall not, in any manner whatever, or at any time, be encumbered, taken or sold, to secure or satisfy any debt or obligation, *or be alienated by the allottee or his heirs,* before the expiration of five years from the date of the ratification of this act."

It is to be observed that this restriction is not personal, as regards the allottee, but applies to his heirs, and is therefore a restraint on alienation which attaches to the allotment itself, and accordingly runs with the land. Such is the decision of this court in *Bowling* v. *United States*, 233 U. S. 528. See also, *Tiger* v. *Western Investment Company, supra.*

The fact that the restriction now under consideration attaches to the allotment itself, is strongly emphasized by section 1 of the Act of May 27, 1908, which is as follows:

> "That from and after sixty days from the date of this act *the status of the lands* allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as respects restrictions on alienation or encumbrance, be as follows."

It is therefore manifest that Congress was here concerned with the status of these Indian allotments. The status of such allotments was, by the provision of this act, in certain cases at least, changed, and certain allotments were transferred from the restricted class to the unrestricted class, and other allotments were retained in the restricted class. All these circumstances simply emphasize the fact that the only obstacle in the way of Goodman granting the lease relied upon by the appellants was the fact that the land covered thereby was subject to a definite and positive restraint or restriction on alienation. This brings us to the consideration of the exact language of the Act of May 27, 1908, which

we contend removed all restrictions from the lands allotted to Goodman, as a result of which the lands themselves were thereafter subject to the operation of the general laws of the State of Oklahoma, whatever they might be.

We will now insert such sections of the Act of May 27, 1908, as must be referred to, to arrive at a construction of the act upon the question at issue. We have italicised the most significant phrases in the various sections:

(35 Stat. L. 312.)

"AN ACT FOR THE REMOVAL OF RESTRICTIONS FROM PART OF THE LANDS OF ALLOTTEES OF THE FIVE CIVILIZED TRIBES, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That from and after sixty days from the date of this act *the status of the lands* allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as regards restrictions on alienation or incumbrance, be as follows: *All lands*, including homesteads, of said allottees enrolled as intermarried whites, as freedmen, and as mixed-blood Indians having less than half Indian blood *including minors* shall be free from *all* restrictions. * * * All homesteads of said allottees enrolled as mixed-blood Indians having half or more than half Indian blood, *including minors of such degrees of blood*, and all allotted lands of enrolled full-bloods, and enrolled mixed-bloods of three-quarters or more Indian blood,

including minors of such degrees of blood, shall not be subject to alienation, contract to sell, power of attorney, or any other incumbrance prior to April twenty-sixth, nineteen hundred and thirty-one, except that the Secretary of the Interior may remove such restrictions, wholly or in part, under such rules and regulations concerning terms of sale and disposal of the proceeds for the benefit of the respective Indians as he may prescribe. The Secretary of the Interior shall not be prohibited by this act from continuing to remove restrictions as heretofore, *and nothing herein shall be construed to impose restrictions removed from land by or under any law prior to the passage of this act.* * * * "

"*Sec. 2.* That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions *have not been removed* may be leased by the allottee if an adult, *or by guardian or curator under order of the proper probate court if a minor or incompetent,* for a period not to exceed five years, without the privilege of renewal: *Provided, That leases of restricted lands for oil, gas or other mining purposes,* leases of restricted homesteads for more than one year, and leases of restricted lands for periods of more than five years, may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior, and not otherwise: *And provided further, That the jurisdiction of the probate courts of the State of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provisions, and the term minor or minors, as used in this act, shall include all males un-*

der the age of twenty-one years and all females under the age of eighteen years."

"*Sec. 4. That all lands from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens as though it were the property of other persons than allottees of the Five Civilized Tribes: Provided,* That allotted lands shall not be subjected or held liable, to any form of personal claim, or demand, against the allottees arising or existing prior to the removal of restrictions, other than contracts heretofore expressly permitted by law."

"*Sec. 5.* That any attempted alienation or incumbrance by deed, mortgage, contract to sell, power of attorney, or other instrument or method of incumbering real estate, made before or after the approval of this act, which affects the title of the land allotted to allottees of the Five Civilized Tribes *prior to removal of restrictions therefrom, and also any lease of such restricted land made in violation of law* or after the approval of this act shall *be absolutely null and void.*"

"*Sec. 6.* That the persons and property of minor allottees of the Five Civilized Tribes shall, *except as otherwise specifically provided by law,* be subject to the jurisdiction of the probate courts of the State of Oklahoma. The Secretary of the Interior is hereby empowered, under rules and regulations to be prescribed by him, to appoint such local representatives within the State of Oklahoma who shall be citizens of that state or now domiciled therein as he may deem necessary to inquire into and investigate the conduct of guardians or curators hav-

ing in charge the estate of such minors, and whenever such representative or representatives of the Secretary of the Interior shall be of opinion that the estate of any minor is not being properly cared for by the guardian or curator, or that the same is in any manner being dissipated or wasted or being permitted to deteriorate in value by reason of the negligence or carelessness or incompetency of the guardian or curator, said representative or representatives of the Secretary of the Interior shall have power and it shall be their duty to report said matter in full to the proper probate court and take the necessary steps to have such matter fully investigated, and to go to the further extent of prosecuting any necessary remedy, either civil or criminal, or both, to preserve the property and protect the interests of said minor allottees and it shall be the further duty of such representative or representatives to make full and complete reports to the Secretary of the Interior. All such reports, either to the Secretary of the Interior or to the proper probate court, shall become public records and subject to the inspection and examination of the public, and the necessary *court fees shall be allowed against the estates of said minors.* The probate courts may, in their discretion, appoint any such representative of the Secretary of the Interior as guardian or curator for such minors, without fee or charge.

And said representatives of the Secretary of the Interior are further authorized, and it is made their duty, to counsel and advise all allottees, adult or minor, having restricted lands of all of their legal rights with reference to their restricted lands, without charge, and to

advise them in the preparation of all leases authorized by law to be made, and at the request of any allottee having restricted land he shall, without charge, except the necessary court and recording fees and expenses, if any, in the name of the allottee, take such steps as may be necessary, including the bringing of any suit or suits and the prosecution and appeal thereof, to cancel and annul any deed, conveyance, mortgage, lease, contract to sell, power of attorney, or any other encumbrance of any kind or character, made or attempted to be made or executed *in violation of this act or any other Act of Congress, and to take all steps necessary to assist said allottees in acquiring and retaining possession of their restricted lands.*

Supplemental to the funds appropriated and available for expenses connected with the affairs of the Five Civilized Tribes there is hereby appropriated, for the salaries and expenses arising under this section, out of any funds in the treasury not otherwise appropriated, the sum of ninety thousand dollars, to be available immediately, and until July first, nineteen hundred and nine, for expenditure under the direction of the Secretary of the Interior: *Provided, That no restricted lands of living minors shall be sold or encumbered, except by leases authorized by law, by order of the court or otherwise.* * * * ”

“*Sec. 9.* That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: *Provided, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved*

by the court having jurisdiction of the settlement of the estate of said deceased allottee: * * * ."

We will now address ourselves to an analysis of the various sections of the Act, quoted above, and will first direct our attention to Section 4 of the Act, which we regard as the pivot in this case. It is here provided that all land from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens, as though it were the property of other persons than allottees of the Five Civilized Tribes. It is difficult to conceive of language more sweeping or more definite and certain than this.

The lands of members of the Five Civilized Tribes are divided into two distinct classes. The first class are restricted lands, and the second class are lands from which restrictions have been removed. In the event that lands fall within the latter classification, then Congress ordains that the same shall be subject to taxation and to all the civil burdens, as though it were the property of other persons than allottees of the Five Civilized Tribes. Is it not emphatically manifest that in case of unrestricted lands which fall within this second class, Congress has finally, conclusively and forever released and relinquished all control?

Now the significance of this section is that it does not provide for a third class of lands. That is, lands bearing a qualified or modified restriction.

Since the act does not contemplate a third class of lands, but simply restricted lands on one side and unrestricted lands on the other, then, of necessity, we must resort to that portion of the act which classifies these allotments into restricted allotments on one side and unrestricted allotments on the other. The provision of the law which performs this office is Section 1 of the act. *Section 1 of the act is the only provision of the entire law which can be resorted to to determine specifically what lands are restricted and what lands are unrestricted, to the end that the language of Section 4, now under consideration, may operate.*

Section 1 declares, in substance, that the status of all lands allotted to allottees of the Five Civilized Tribes, shall, as respects restrictions on alienation or encumbrance, be as follows:

> "*All lands,* including homesteads, of said allottees enrolled as intermarried whites, as Freedmen and as mixed-blood Indians, having less than half Indian blood, *including minors,* shall be free from all restrictions."

Let us consider the studious care which was exercised by Congress in the enactment of this provision and the exact phraseology that was employed. The term "all lands" would include, homesteads as well as the surplus allotments of these allottees, but for the purpose of adding clearness the term "including homesteads" was used. The term "allottees enrolled as mixed-blood Indians having less

than half Indian blood", would include minors of that blood, unless minors were expressly excepted from the operation of this language. But again, with studious care, Congress added the term "including minors". Then, again, if Congress had simply declared that these lands should be free from restrictions, this term would have been sufficiently inclusive to strike down all restraints on alienation; but this purpose, also, is emphasized by the use of the term "shall be free from *all* restrictions."

Summarizing, then, the clause under consideration is simply this: *All lands, including homesteads, of mixed-blood Indians having less than half Indian blood, including minors, shall be free from all restrictions.* It is impossible to imagine plainer, clearer and more exact language than this. The same studious care is exercised with reference to the remaining part of this section. Where restrictions are retained, it is expressly said that the restrictions are retained on the allotments of minors of the same degree of blood, and then, in the case of the restricted lands, there follows a broad and sweeping prohibition against alienation; that is, "such lands shall not be subject to alienation, contract to sell, power of attorney or any other encumbrance prior to April 26, 1931."

We cannot escape the positive conviction that Section 1 of this act is the only section of the law which can be referred to to determine those classes of allotments upon which restrictions were retained.

This is the section, therefore, which must be referred to to bring into operation Section 4 of the act.

As already stated, Section 4 prescribes the consequences which follow the removal of restrictions. It is here stated that lands from which restrictions are removed shall be subject to taxation and all other civil burdens as though it were the property of other persons than allottees of the Five Civilized Tribes. Manifestly, this section is inoperative, unless the class of lands upon which it is predicated, namely, unrestricted lands, are defined by some other section of the law, *and again we repeat that to ascertain this class of lands, resort must be had to section 1 of the act.*

One of the primary purposes of the act of May 27th, 1908, was to provide for the taxation of lands in the Indian Territory. The state was admitted in November, 1907, about six months previously. The first taxes of the new state were to be assessed for the year 1908. The state authorities found themselves confronted by the fact that one-half of the entire area of the state, namely, the Indian Territory, was held by Indians whose lands were subject to restrictions on alienation, and, in consequence thereof, were non-taxable. The primary remedy designed by this statute, as appears from the debates in Congress on this subject, was to provide for the taxation of lands in the Indian Territory which, of necessity, involved the removal of restrictions on

alienation. This accounts for the sweeping removal of restrictions provided for in section 1 of the act under consideration, and, to some extent at least, must account for the exact language in which this section was framed. The consequences of this decision, therefore, are far reaching and of the utmost importance. *If this court should hold that the lease of appellants is invalid, it can do so for one reason alone: that is because the Goodman allotment was still subject to restrictions on alienation, which would prevent the operation of the ordinary laws of Oklahoma. If the Goodman allotment is still subject to restrictions on alienation, then it and all other allotments of its class fall beyond the operation of section 4 of this act, in consequence of which all these lands will not be subject to taxation by the State of Oklahoma.* There can be no escape from this alternative.

Now, it is apparent from section 1 of the act, and it is so conceded by the Circuit Court of Appeals, that if section 1 stood alone, this decision should be for appellants, because Goodman's allotment falls within the class from which all restrictions are removed, in consequence of which all of the ordinary laws of Oklahoma apply, including those which authorize district courts of the state to confer majority rights on minors. But they assert that the language of section 1, so far as the allotments of minors are concerned, is modified by other provisions of the law. We have already quoted in

full all sections of the law which can be referred to by them in support of their contention, and will now proceed to analyze the remaining sections of the act.

Section 2 concerns itself with restricted lands alone. Section 1 has already classified allotments into restricted lands on one side and unrestricted lands on the other. The remaining sections of the act are devoted to attaching certain consequences to one or the other of these classes, namely, restricted lands or unrestricted lands. Therefore, section 2 concerns itself, as already stated, with the class of restricted lands. It is here provided how leases of restricted lands may be made. No lease can be made either by an adult, or by the guardian of a minor, beyond the term of five years without the approval of the Secretary of the Interior. No lease for oil, gas, or other mining purposes can be made without the approval of the Secretary of the Interior. Then follows this proviso:

> "*And provided further*, that the jurisdiction of the probate courts of the State of Oklahoma over lands of minors and incompetents, shall be subject to the foregoing provision, and the term minor or minors, as used in this act, shall include all males under the age of twenty-one years and all females under the age of eighteen years."

It is obvious that the first part of this proviso simply limits the probate jurisdiction of the courts of Oklahoma; that is, these courts cannot authorize

any lease beyond the term of five years, or *any mining lease,* excepting subject to the approval of the Secretary of the Interior. Then follows the provision "that the term minor or minors, as used in this act, shall include all males under the age of twenty-one years and all females under the age of eighteen years". This last quotation from section 2 is the precise part of the act which the Circuit Court of Appeals holds qualifies the plain and unequivocal language of section 1. The court said:

> "The exclusive right to determine when Goodman became of age was in Congress, so far as his allotment was concerned. It declared that he should not become of age until he became twenty-one. A law of Oklahoma which declared that he should become of age at twenty, would be in conflict with the act of Congress and would be void. So, any act of the state which authorized any of its courts to determine that Goodman became of age when he was twenty, or that at such age he had the rights of an adult, would be in contravention of the same law and would also be void. * * * These statutes could confer no jurisdiction upon that court to remove the disabilities of infancy under which Goodman labored at the time the decree was made, so far as his allotment was concerned."

Now, this is the language of the Circuit Court of Appeals in holding that the clear, positive and unmistakable terms of section 1 do not apply to Goodman's allotment.

At this stage, we desire to refer to *United States* v. *Nichols Lumber Co.*, 234 U. S. 245. Here suit was brought by the United States to cancel conveyances, made by certain Indians, which the government claimed covered restricted lands. The Act of Congress removing restrictions, removed restrictions from all mixed-blood Indians. The Indian in this case had more than half Indian blood, and it was contended by the government that the term "mixed bloods" meant only those Indians who were of one-half white blood or more. In short, a strained and far-fetched construction was resorted to, to meet the plain and unmistakable terms of the act. This court said:

> "Interpreted according to the plain import of the words, the persons intended to be reached by the clause are divided into two, and only two, well defined classes, fullblood Indians and mixed blood. There is no suggestion of a third class, having more than half of white blood or any other proportion, than is intended in the term mixed blood, as contrasted with the fullblood. If the government's contention is correct, the Indians of fullblood must necessarily include half bloods; and mixed bloods must mean all of those having less than half blood and none others. Such construction is an obvious wrestling of terms in plain import from their usual and well understood signification."

The court in this case quotes certain of the language of this court in *Tiger* v. *Western Investment Company, supra,* and then concludes:

> "If Congress, having competency in mind and that alone, had intended to emancipate from the prevailing restrictions on alienation, only those who are half white or more, *by a few simple words it could have effected that purpose.* We cannot believe that such was the congressional intent, but we are clearly of the opinion that the courts may not supply the words which Congress omitted."

In *Tiger* v. *Western Investment Co., supra,* it is said:

> "Had Congress intended not to interfere with fullblood Indian heirs in their right to make conveyances after the expiration of five years, named in paragraph 16 of the Act of 1902, *it would have been easy to have said so.*"

These quotations from this court express our contention exactly. Congress in the Act of May 27th, 1908, divided these Indian allotments into two, and only two, distinct classes. With respect to a certain class of these lands, restrictions were removed. With respect to the other class, restrictions were expressly retained, and, in addition to this, safeguarded by a positive and sweeping prohibition against alienation. The appellee in this case is reduced to the necessity of contending that the Act of May 27th, 1908, provided for three classes of allotments:

> *(1st.)* Adults of a certain degree of blood from whose allotments restrictions were removed.
>
> *(2nd.)* Minors of the same degree of blood where restrictions were retained, and

(3rd.) Both adults and minors of a different degree of blood where restrictions were retained, and, moreover, where Congress *took the added precaution to again express a far-reaching prohibition against alienation."*

If this contention be true, why did Congress in plain terms couple the second class contended for by the appellee, with the first class? Moreover, if this contention be true, why did Congress fail to include in the class of restricted lands the second class contended for by the appellee, and thereby deprive that class of the benefit of the prohibition, that the lands "Shall not be subject to alienation, contract to sell, power of attorney, or any other encumbrance"?

Equally significant is the later language in the *Nichols* case and the language in the *Tiger* case just quoted. It is here said that if Congress had intended the consequences asserted in these cases, then "by a few simple words it could have effected that purpose." This is precisely our position in this case. If Congress had intended to retain any sort of restriction on the alienation of the lands of mixed blood Indians of the degree of blood possessed by Goodman, then a few simple words would have effected that purpose.

Moreover, it is apparent from the previous legislation of Congress upon this subject, that where minors were intended to fall into a separate and distinct class with respect to restrictions on alienation, this class was provided for in plain and unmistakable language.

Section 4 of the Original Creek Agreement (31 Stat. L. 861), provides:

> "Allotment for any minor may be selected by his father, mother, or guardian, in the order named, *and shall not be sold during his minority.*"

Here the test of competency, with respect to restrictions on alienation, was expressly declared to be the minority of the allottee. This classification was wholly disregarded in the Act of May 27th, 1908, and the degree of Indian blood was determined upon as the boundary between restricted lands on one side and unrestricted lands on the other. It might be urged in this connection, that this section is authority for the proposition that a prohibition exists during the minority of Goodman. The answer to this, however, is that Goodman is a Cherokee and is not controlled by the provisions of the Creek Treaty. And, moreover, even as to Creek Indians of the degree of blood possessed by Goodman, all restrictions were removed by the Act of May 27th, 1908. Our only purpose in referring to this provision of the Creek Treaty is to show that when Congress was concerned with distinguishing between minors on one side and adults on the other, with regard to restrictions, that the intention of Congress was plain and manifest.

The following provision appears in the Act of April 21st, 1904 (33 Stat. L. 189):

> "And all the restrictions upon the aliena-

tion of lands of all allottees of either of the Five Civilized Tribes of Indians who are not of Indian blood, *except minors,* are, except as to homesteads, hereby removed. And all restrictions upon the alienation of all other allottees of the said Tribes, *except minors,* and except as to homesteads, may, with the approval of the Secretary of the Interior, be removed."

Here, again, in two specific instances, minors, as such, are in plain terms excepted from the operation of the law removing restrictions.

Section 22 of the act approved April 26th, 1906 (34 Stat. L. 137), provides:

> "*That the adult heir* of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued, for his or her share of the land of the tribe to which he or she belongs or belonged, may sell and convey the land inherited from such decedent; and if there be *both adult and minor heirs* of such decedent, then such minors may join in a sale of such lands by Guardian duly appointed by the proper United States court for the Indian Territory."

Here, again, Congress was concerned with distinguishing between adults and minors as regards restrictions. The only circumstance under which a minor heir of the deceased Indian could alienate his interest in an inherited allotment was when there were both adult and minor heirs of the decedent. If there were minor heirs alone, all restrictions re-

mained. It is obvious, therefore, in the light of this prior legislation that whenever Congress intended to distinguish between minors on one side, and adults on the other, with respect to restrictions on alienation, that this purpose was evidenced by plain and unequivocal language.

In the Creek Treaty, a minor was expressly prohibited from alienating his allotment during his minority. In the Act of April 21st, 1904, minors were expressly excepted from that class of citizens from whose lands restrictions were removed. In the Act of April 26th, 1906, the same distinction is observed. Therefore, it seems manifest that if Congress in the Act of May 27th, 1908, had intended to make a separate class of minors, as regards restrictions, as is contended for by the appellee, then it would have followed its previous custom and would have provided for this distinction in positive terms. The Act of May 27th, 1908, however, is exactly to the contrary. Minors, instead of being excepted from the operation of the act, are, in the case of Indians of the class to which Goodman belongs, expressly included.

Section 9 of the Act of May 27th, 1908, copied above, is significant as to this intention on the part of Congress. It is here provided "That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land." This section, of course, deals with that class of allotments which are re-

stricted under the provisions of section 1, namely, fullbloods and mixed-bloods of half blood or more, as prescribed in the section. The circumstance which removed restrictions as to these classes of Indians, was the death of the allottee. The language just quoted removes all restrictions in these cases, just as the language of section one removes all restrictions as to the classes therein designated. But mark the plain and exact manner in which Congress qualified and modified the general clause removing restrictions. Immediately following the clause removing restrictions, a proviso was inserted, "That no conveyance of any interest of any fullblood Indian heir shall be valid unless approved by the court having jurisdiction of the estate of the deceased allottee." Here, Congress took care of a situation similar to the one contended for by the appellee, in plain terms. The appellee asserts that the general language of section 1 is qualified by the mere implications contained in other sections of the law. Here, however, Congress had to deal with a situation which was similar in all respects, and by its proviso made plain its meaning. For these reasons, and again recurring to the language of this court in the *Nichols* case and in the *Tiger* case, we contend that if it had been the purpose of Congress to retain restriction on the lands of minor allottees of the Five Civilized Tribes, it would have accomplished this purpose in precisely the same manner which it had done in previous legislation.

We will now take up the discussion of section 5 which reads, as follows:

> "That any attempt at alienation or encumbrance by deed, mortgage, contract to sell, power of attorney, or other instrument or method of encumbering real estate, made before or after the approval of this act, which affects the title of the land allotted to allottees of the Five Civilized Tribes *prior to removal of restrictions therefrom, and also any lease of such restricted land made in violation of law before or after the approval of this act, shall be absolutely null and void.*"

Now, the question which arises is as to how we are to apply this section? This section refers to a single class of lands, namely, lands under restriction. How can we ascertain what lands are restricted and what lands are unrestricted? We contend with all emphasis that reference must be made to section 1 of the act and to that alone. In section 1 immediately following the classification of restricted lands, a prohibition against alienation, contract to sell, power of attorney, or other encumbrance, is imposed. In section 5, we have substantially the same prohibition and it is addressed to restricted lands. The relation of section 1 and section 5 is all-important. It is section 5 which declares conveyances of leases of restricted lands to be null and void. Now, how can counsel for appellee resort to a strained construction in this case, also, and contend that while section 1 of the act removes all restrictions in the case of minors of the degree of blood

possessed by Goodman, that the lands are still restricted, and that the consequences provided for in section 5 attach? This section is simply a further manifestation of the fact that Congress divided these allotments into two distinct classes, and that the division is set forth in section 1 of the act.

We shall now undertake the consideration of Section 6 of the Act of May 27, 1908. The material portions of this section have already been quoted in full. We shall now give the substance of this section:

(a) The first clause is to this effect: "That the persons and property of minor allottees of the Five Civilized Tribes shall, except as otherwise specifically provided by law, be subject to the jurisdiction of the probate courts of the State of Oklahoma."

(b) Then follows a somewhat lengthy provision in this section, authorizing the Secretary of the Interior to appoint local representatives in the State of Oklahoma, to exercise a measure of supervision over the estates of minor Indians. So far as the language of this portion of the section is concerned, it apparently applies to the estates of that class of Indians whose restrictions are removed by the act, as well as that class of Indians whose restrictions are retained.

(c) The further duty is imposed upon these representatives to counsel both adult and minor al-

lottees *whose lands are restricted,* and on their behalf to bring suits to cancel and annul any deed or other conveyance made or attempted to be made in violation of any Act of Congress. It is important to observe here that this duty of bringing suit applies only in the case of restricted lands.

(d) Provision is made for an appropriation to pay expenses incurred under this section, and, added thereto, the following proviso appears: "Provided, that no restricted lands *of living minors* shall be sold or encumbered, except by leases authorized by law, by order of the court, or otherwise."

(e) This section contains a further appropriation of Fifty Thousand Dollars, to be used in the payment of necessary expenses incident to suits brought under this section, the suits referred to being suits covering restricted lands alone.

(f) It is here further provided that nothing in the act contained shall be construed as a denial of the right of the United States to bring suit to remove clouds on the title, by virtue of conveyances made prior to the removal of restrictions.

While section 6, just analyzed, is not construed by the Circuit Court of Appeals for the Eighth Circuit, as having any important bearing on the question now before this court, this section enters largely into the decision of the Supreme Court of the

State of Oklahoma in *Jefferson* v. *Winkler*, 26 Okla. 653, 110 Pac. 755, which is cited by the Circuit Court of Appeals in its opinion in this case. In the case of *Jefferson* v. *Winkler*, the Supreme Court of Oklahoma held that the clause of Section 2 defining the term "minors", and sub-division "A" of Section 6, as analyzed by us, qualified the operation of Section 1 of the act. In the same case, and in succeeding cases as well, the Supreme Court of Oklahoma has decided that by virtue of Section 6 of the act, and of that portion of Section 2 already quoted, the only way that a mixed-blood Indian of the Five Civilized Tribes under the age of twenty-one years, in the case of a male, and under the age of eighteen years, in the case of a female, could convey or lease his allotment, was by virtue of an order of the probate court of Oklahoma; that these sections of the act provided for a qualified removal of restrictions; that Section 1 of the act did remove all Congressional restrictions, but that by virtue of Section 6 and the clause defining minority, in Section 2, Congress delegated the exclusive control of these allotments to the probate courts of Oklahoma, until the ages specified in the act were attained.

In the light of these decisions, we now propose to analyze Section 6 as the same is sub-divided in this brief, *first*, with regard to subdivision *(a)*, namely, "That the persons and property of minor allottees of the Five Civilized Tribes shall, except as otherwise specifically provided by law, be subject to

the jurisdiction of the probate courts of the State of Oklahoma". It is true that the language of this clause apparently embraces minor allottees whose lands are restricted, as well as those whose lands are not restricted. Eliminating, for the time being, the exception mentioned in this clause, namely, "Except as otherwise specifically provided by law", the clause simply releases all Congressional control over the persons and property of minor allottees of the Five Tribes, and, this control having been released, the ordinary jurisdiction of the probate courts of Oklahoma attached as a matter of course. Congress possessed no power to confer jurisdiction upon the state courts in Oklahoma, and obviously legislated with this limitation in mind. What Congress did was to release its control, and, by virtue thereof, the probate jurisdiction of the courts of Oklahoma immediately attached.

There has been more or less litigation in the Western states over the question as to whether or not the persons and property of Indian allottees were subject to the probate laws of the state where they reside and where their lands are situate. This explains to us the probable reason for the enactment in question, namely, this portion of the act was adopted to make it clear beyond question that Congress surrendered the persons and property of minor allottees of the Five Civilized Tribes to the jurisdiction of the probate courts of Oklahoma.

At this stage, a circumstance worthy of comment is that the general term "property" is used, instead of the term "allotments". Now obviously the property of a minor allottee might include personal property over which Congress never had any control, or it might include real estate in addition to the minor's allotment, over which Congress never had any control. Since the broad term "property" is used, instead of the term "allotments", the conclusion is emphasized that the purpose of this clause was to make it clear beyond any peradventure that Congress had surrendered its control of the persons and property of these minor allottees, to the end that the probate jurisdiction of the courts of the state might attach. If, on the other hand, it was the persons and allotments of these allottees which were surrendered to the probate courts of the state, there would be greater reason for the assertion on the part of the appellee that this constituted a qualified restriction on the alienation of these allotments, namely, an alienation which was by order of the probate court, and not otherwise.

Summarizing, then, at this stage, we assert, with positive conviction, that the purpose of the clause just quoted was not to impose a qualified restriction on the alienation of these allotments, but on the contrary was to place, beyond any question, the fact that the persons and property of these minor allottees were subject to the probate jurisdiction of the courts of Oklahoma, for the reason that, in various

of the Western states, this question had been a subject of frequent litigation.

This brings us to the exception contained in this clause, namely, that this probate jurisdiction should attach, except as otherwise specifically provided by law. The Circuit Court of Appeals held that this exception refers only to Federal laws. In answer to this, we refer to another clause of the same section, where the Federal laws, as distinguished from the state laws, are specifically referred to. Now if the general term, "except as otherwise specifically provided by law", refers only to Federal laws, why, in the same section, should Congress provide that suit should be brought to cancel any deed or conveyance, made or attempted, in violation of this act, or any other act of Congress? In the last instance, the Federal law was meant, and the Federal law was specifically referred to. Is it not a fair inference, therefore, that the expression, "except as otherwise provided by law", referred, not only to acts of Congress, but referred to laws of the State of Oklahoma, as well?

Section 2 of the act places a limitation on the leasing of the restricted lands of minor allottees. These restrictions are that a guardian of an allottee whose lands are restricted cannot lease the same for a term beyond five years, for any purpose, nor for mineral purposes, without the approval of the Secretary of the Interior first obtained. The same section provides that the jurisdiction of the probate

courts of Oklahoma shall be subject to this limitation; therefore, this limitation is one of the exceptions to the full and complete jurisdiction of the probate courts of Oklahoma. In this instance, the exception is created by Federal law.

Recurring, now, to Section 4 of the act, which provides for the taxation of unrestricted lands, it certainly must be clear that this is one of the exceptions contemplated by the clause now under consideration. In short, if these unrestricted lands are subject to taxation, then they can be sold for delinquent taxes without the intervention of the probate court, and accordingly this would be a provision of law which would exclude the allotment of one of these minors from the jurisdiction of the probate court.

Referring again, to Section 4, the same clause which subjects unrestricted lands to taxation subjects them to all other civil burdens of the state. If, therefore, there is some other law of the State of Oklahoma which, in certain cases, would exclude the jurisdiction of the probate courts of that state, then instances such as these would be within the exception.

Summarizing our comment on this exception, we make the following observations:

(1) We contend that the clause, "except as otherwise specifically provided by law", refers to the laws of the State of Oklahoma, as well as to

acts of Congress, for the reason that in the same section where this clause appears, and where Congress contemplated acts of Congress alone, it manifested its intention in this respect by referring specifically to "this act or any other act of Congress".

(2) This exception refers to Federal law, for the reason that Section 2 of the act, in specific terms, limits the jurisdiction of the probate courts of Oklahoma in case of restricted lands.

(3) If these lands are subject to taxation, it is by virtue of the single fact that the lands themselves are unrestricted, as lands of this description alone are subject to this burden. If these lands are subject to taxation, then manifestly they can be sold for delinquent taxes in the manner prescribed by the laws of the State of Oklahoma in that regard, which would be without the intervention of the probate courts of the state. If this can be done, it follows that the sale of these lands for taxes, according to the laws of the state, is one of the exceptions referred to in this clause. Therefore, the decision of the Supreme Court of Oklahoma in *Jefferson* v. *Winkler, supra,* is unsound, for it is there held that by virtue of that portion of Section 2 which defines minority, the probate courts of Oklahoma have the exclusive jurisdiction to order the sale of the lands of male Indians

under the age of twenty-one years, and females under the age of eighteen years.

(4) The same section of the act under consideration which subjects these lands to taxation, subjects them to all other civil burdens of the state; that is, subjects them to all the laws of the state. Therefore, if the laws of the state providing for the sale of lands of this description for taxes apply to the exclusion of the jurisdiction of the probate courts of the state, then any other law of the state which would exclude the jurisdiction of these probate courts would be within the language, "except as otherwise specifically provided by law".

Coming now to Subdivision *(b)* of our analysis of section 6, it appears that the preceding part of the section has the effect of surrendering to the jurisdiction of the probate courts of Oklahoma the persons and estates of minor allottees, except as otherwise provided by law, regardless of whether the minors in question are the class designated as restricted or unrestricted by section 1 of the act. It is then provided that the Secretary of the Interior is empowered to appoint local representatives in the State of Oklahoma who shall investigate the conduct of guardians of these allottees, and, if, in their opinion, the estates of any of these minors are being dissipated or wasted that fact shall be reported by the representatives to the proper probate court, and the representatives shall take necessary steps to

have the matter fully investigated, including the power on their part of prosecuting any necessary remedy, either civil or criminal, to preserve the property and protect the interests of the minors. Now, does this portion of the act, taken in consideration with that portion of section 2 which fixes the age of minority, qualify the broad language of section 1 which removes all restrictions as to Indians of the class to which Goodman belongs. In short, do these portions of the act reimpose a restriction removed by section 1? We cannot perceive how the definition of the term "minor" as used in the act, qualifies the operation of section 1 in the slightest degree. This portion of the act defines minors as all males under the age of twenty-one years. Now, the term "minor" itself is used in that portion of section 1 which removes all restrictions as to Indians of Goodman's class. If this definition of minority is to apply to the term "minor", as used in one portion of the act, then plainly enough the same definition must be used in such other parts of the act as the term "minor" appears. Such being true, this definition of minority can have absolutely no bearing on this question, for the substitution of the term "males under the age of twenty-one years and females under the age of eighteen years" for the term "minor" in section 1 simply has the effect of removing all restrictions from all male allottees under the age of twenty-one years and all females under the age of eighteen years of the degree of

blood possessed by Goodman. Surely, then, this clause of the act cannot defeat the portion of section 1.

Now, as stated above, the second portion of section 6, which we have analyzed as subdivision *(b)*, confers upon the Secretary of the Interior a measure of control over these minor allotments, whether restricted or unrestricted, through the instrumentality of representatives of the Secretary of the Interior in the State of Oklahoma. Any individual interested in the welfare of these minors, might take the same action as is here delegated to the representatives of the Secretary of the Interior. We cannot perceive how this portion of the act can strike down the plain terms of section 1 and the plain terms of sections 2, 4 and 5 which are dependent for their operation upon the classification of restricted lands fixed by section 1. An answer to this position of the appellee is, that this portion of section 6 does not exempt these minor allotments from taxation. If it does not exempt these lands from taxation, then the lands are unrestricted, as the only lands which are subject to taxation are unrestricted lands. If the lands are unrestricted, then all laws of the State of Oklahoma operate.

Subdivision *(c)* of our analysis of section 6 throws some light on the portion of the section just referred to. Here these representatives are authorized to counsel and advise all allottees, adult

or minor having restricted lands, of their legal rights and, if necessary, bring suit on their behalf if their lands have been sold contrary to any Act of Congress. Here the matter dealt with is restricted lands, and the power of this representative to bring suit in case of restricted lands, over which of necessity Congress would have great solicitude, is limited to the bringing of suits where these lands have been sold contrary to some Act of Congress. Now, no similar provision appears with reference to the duties of these representatives before the probate courts of Oklahoma where unrestricted lands might be involved. Here the law which they would invoke to protect the estates of these minors could not be any Act of Congress, for Congress does not deal with this subject, but would be the ordinary laws of Oklahoma framed for the purpose of protecting a ward against the unlawful acts of his guardian.

This brings us to subdivision *(d)* of our analysis of section 6, and we regard this portion of the section as most important in arriving at the intention of Congress in this regard. After the making of an appropriation to provide for these representatives of the Secretary of the Interior, the following proviso is inserted:

> "Provided that no restricted lands of living minors shall be sold or encumbered, except by leases authorized by law, by order of the court or otherwise."

Now, here is an affirmative restriction imposed in positive and plain language upon the allotments of minors. The restriction is imposed on *restricted lands,* and the restriction is imposed on the lands of living minors, because section 9 of the act removes restrictions at the time of their death. The only conveyances here permitted in case of the restricted land of these minors, are leases authorized by law. The probate courts are here forbidden to authorize a sale of these lands under any condition, and, obviously, lands of this description would not be subject to taxation and, therefore, within the provisions of section 4 of the act. *Now, the important conclusion to be drawn from this proviso is, that Congress recognized as a distinct class the restricted allotments of minors. This implies that there would be another class of minors whose lands are not restricted, and we are again forced to resort to section 1 of the act, to apply this section; that is, to determine what the term "restricted lands of living minors" means.* Section 1 of the act, after defining the classes of lands which are restricted, specifically includes the allotments of minors of that degree of blood. Then follows the provision that such lands shall not be subject to alienation, contract to sell, power of attorney, or any other encumbrance. If the legislation stopped there, these restricted lands, including the restricted lands of minors, could never be conveyed or leased excepting when the Secretary of the Interior would remove these restrictions. It

appears, however, that section 2 of the act takes care of this situation, and it authorizes the guardian of a minor owning restricted lands to make a five-year lease without the approval of the Secretary of the Interior, or to make a lease beyond that term, or for mineral purposes with the approval of the Secretary of the Interior. Then follows the proviso now under consideration, namely, that the restricted lands of living minors shall not be sold or encumbered except by leases authorized by law. Sections 1, 2 and section 6 are thereby brought into the closest relation, each section depending on the other for its meaning. *Therefore, it must be that Congress contemplated just two classes of lands—unrestricted lands and restricted lands. The third class contended for by appellee, namely, the class from which congressional restrictions have been removed but where Congress continued a qualified restriction through the instrumentality of the probate courts of Oklahoma until males, of the degree of blood possessed by Goodman, reach the age of twenty-one years, finds no place in this act.*

Summarizing the foregoing, we desire to assert the following propositions:

First. The decision of this case depends upon whether or not all restrictions on the Goodman allotment were removed by the Act of May 27, 1908.

Second. If this act removed all restrictions from Goodman's allotment, then both Goodman and his allotment were subjected to taxation and all other civil burdens, the same as though these lands were owned by persons other than an allottee of the Five Civilized Tribes. Such is the plain language of section 4 of the act.

Third. If Goodman and his allotment were thus subjected to the civil burdens referred to in section 4, then all laws of the State of Oklahoma, whatever they might be, became operative with respect to this allotment.

Fourth. At the time of the removal of these restrictions, as well as on the 12th day of October, 1909, there was a general law in force in the State of Oklahoma which qualified the jurisdiction of the probate courts of that state and which authorized the District Courts of that state to confer full rights of majority in special cases.

Fifth. If Goodman's restrictions were so removed, then this law, with the other general laws of the state, became operative with respect to Goodman and his lands.

Sixth. October 12, 1909, which was subsequent to the Act of May 27, 1908, the District Court of Washington County, Oklahoma, conferred full rights of majority on Goodman, and on the 20th of October, 1909, he granted the lease relied

upon by appellants, which was recorded prior to the taking of the lease relied upon by the appellee. If the foregoing propositions are sustained, then appellants' lease is valid and the decision of the Circuit Court of Appeals should be reversed.

We affirm each of the propositions asserted above, and will now summarize our argument in support thereof. We make the following contentions:

(a) Section 1 of the act in specific terms removes all restrictions from Goodman's lands. To emphasize this, the term "including minors" is employed. This section of the act in clear and positive terms makes a sharp division between restricted lands on one side and unrestricted lands on the other. Where lands are designated as restricted in this section, an additional prohibition against alienation, framed in careful language, is attached. *A careful reading of each provision of the act must demonstrate to a certainty that section 1 is the portion of the act specifically and conclusively employed by Congress to define the classes of restricted lands on one side and unrestricted lands on the other.*

(b) Section 4 of the act contemplates some provision in the act itself which, in specific terms, divides restricted lands from unrestricted lands. This section concerns itself only with one of

these two classes, namely, unrestricted lands, and it is here declared that these lands shall be subject to taxation and all other civil burdens of the State of Oklahoma.

(c) Section 5 also contemplates a single class of lands, namely, restricted lands. This section prescribes the penalty which shall attach when restricted lands are conveyed or leased in violation of law.

(d) Both section 4 and section 5, of necessity, require for their operation a clear division between restricted lands and unrestricted lands.

(e) The proviso in section 6, as follows: "Provided that no restricted lands of living minors shall be sold or encumbered except by lease authorized by law, by order of the court or otherwise," implies that the allotments of some minors are unrestricted. The appellee is reduced to the necessity of taking one of two positions. He must contend that restrictions were not removed from any minor allotments, in which event he will be required to include Goodman, a one-eighth degree Cherokee, in the same class as full-blood or three-quarter-blood Cherokees whose lands are within the positive restriction of section 1, or he must provide a third class of allotments, namely, the allotments of all minors where, until the ages specified in the act are retained, no conveyances can be made ex-

cepting through the probate courts of Oklahoma. *In either event, however, he must contend that all minor allotments are restricted in one sense or another.* This proviso strikes squarely at this contention and is a clear indication that the allotments of some minors are unrestricted, else why use the expression "no restricted lands of living minors," if, under the preceding section of the act, *all* lands of minors are restricted?

(f) Section 9 of the act performs the same office with respect to full-blood heirs of deceased allottees as is contended for by the appellee in this case with respect to Goodman. The appellee concedes that the general language of section 1 removes all restrictions on the Goodman allotment, but contends that the operation of this section is limited and qualified by a portion of section 2 and by section 6. Now, all that section 2 does is to define the term "minor" as used in the act. One place in the act where the term "minor" is used is where restrictions are removed in the case of Indians of Goodman's class. If you substitute the definition of minority, expressed in section 2, for the term "minor," as used in this portion of section 1, then section 1 simply means that all restrictions of male allottees under the age of twenty-one years are removed. Section 6 simply surrenders to the probate courts of Okla-

eration of all other laws of the State of Oklahoma, for the lands are not subject to taxation unless all restrictions are removed. If they are removed, then the title of appellants to their lease is valid.

While other specifications of error are set forth in the record, we intend to confine our argument to the propositions urged above.

Respectfully submitted,

JAMES A. VEASEY,
LLOYD A. ROWLAND,
Attorneys for Appellants.

Office Supreme Court, U.
FILED
JAN 14 1915
JAMES D. MAHER
CLE

No. 160

IN THE
SUPREME COURT
OF THE
UNITED STATES

A. A. TRUSKETT AND W. O. TRUSKETT,
Appellants,

vs.

FRED D. CLOSSER, *Appellee.*

APPEAL FROM THE
CIRCUIT COURT OF APPEALS OF THE UNITED STATES,
FOR THE EIGHTH CIRCUIT.

BRIEF.

EUGENE MACKEY,
T. H. STANFORD,
G. T. STANFORD,
Attorneys for Appellee.

JOHN H. BRENNAN, *of Counsel.*

Independence, Kansas, January 9, 1915.

TRIBUNE PRINTING CO., INDEPENDENCE, KANSAS.

INDEX.

	Page
Statement of the Case	1
Argument	2
The Fundamental Principle of Governmental Indian Legislation is Protection to the Property and Person of the Indian	2
The Basic foundation of Appellant's argument is founded upon an Act of Oklahoma Territory, passed and approved March 5, 1895	3
The origin and applicability of the Statute of 1895 as applied to Indian Minor Allottees	4
The policy of the Government in its dealings with the Indians as interpreted by Judicial Decisions	7
Excerpt from In Re Heff, 197 U. S. 488	8
Excerpt from Lone Wolf v. Hitchcock, 186 U. S. 533	9
The Government by the First Section of the Enabling Act retained in itself, supreme and exclusive control over the Indians	10
Excerpt from section one of the Enabling Act	10
Congress delegated to the Probate Courts of the State Exclusive Control over Minor Indian Citizens	12
Excerpt from sections 2 and 6, Act of May 27, 1908 35 Stat. L. 312	13
Contention of Appellee	15
The Paramount issue in this case is, In Whom is Vested the Exclusive Right to Determine the Personal Status of Minor Indian Citizens	16
The case of Jefferson vs. Windker, 26 Okla. 652, construing Act of May 27, 1908	24-25-26-27-28-29-30
It is within the province of the State Courts to interpret their own laws	34
No distinction is made by Appellants between voluntary and involuntary alienation	41
General observation made by Appellee	45-46-47
The logical deduction and interpretation of Sections 1, 2, 6 and 4, of the Act of May 27, 1908	48
The question of Public Policy in this case	49
Appellee's Statement of the Proposition presented by the Fourth and Fifth Assignments of Error	51
The Right of Congress to Extend an Existing Restriction	52
Sections 13, 14, 15, of the Act of July 1, 1902, 23 Stat L. 716	55-56
Statements of the rules that govern in the construction of statutes where there is a seeming conflict	57-58-59-60-61-62
The Case of Allen v. Oliver, 121 Pac. 226, construing secs. 14 and 15 of the Act of July 1, 1902, 32 Stat. L. 716,	63-64-65-66-67-68
Opinion of the Attorney General relative to the interpretation of sections 13, 14, 15, Act of July 1, 1902, 32 Stat. L. 716	70-71-72-73-74

CASES CITED.

Page

Priddy v. Thompson, 204 Fed 955 7-42
Lone Wolf v. Hitchcock, 187 U. S. 533..... 8-13-22
In Re Heff, 197 U. S. 488 8-13
U. S. v. Celestine, 215 U. S. 278 8
U. S. v. Sutton, 215 U. S. 291 8
U. S. v. Allen, 179 Fed. 13 8-14-22-52
Heckman v. U. S., 224 U. S. 413, 56 L. Ed. 821..... 8-52
Estate Ex Rel Boyd, 31 Neb. 721, 48 N. W. 139..... 10
Boyd v. State, 143 U. S. 135..... 10
U. S. v. Fitzgerald, 201 Fed. 295 10-13-22
Tiger v. Western Investment Co., 221 U. S. Rep 286
..... 10-13-16-19-22-52
Worcester v. Georgia, 6 Pet. 515 10
Fellows v. Blacksmith, 60 U. S. 366, 15 L. E. D. 684.... 10
U. S. v. Kagama, 118 U. S. 384 10
Cherokee Nation v. Hitchcock, 187 U. S. 307.....13-22
U. S. v. Ritchie, 188 U. S. 43 13-22
Jefferson v. Winkler, 26 Okla. 653, 110 Pac. 755 24-25-32-43
Walker v. Brown, 146 Pac. 681 31
Dodd v. Cook, 137 Pac. 348 31
Tiery v. Darnall, 133 Pac. 614..... 31
Gill v. Hogarty, 112 Pac. 641 31
Brunner v. Cobb, 131 Pac. 165 31
Cochran v. Teehee, 138 Pac. 563 31
Barbee v. Hood, 214 Fed. 473 31
Bell v. Cook, 192 Fed. 579 31
U. S. v. Berneys, 158 Fed. 793 35
Choate v. Trapp, 224 U. S. 665 44
English v. Richardson, 224 U. S. 688 480
Doe v. Wilson, 23 Howard, 457 55
James v. Meehan, 175 U. S. 1 55
Washington Market Company v. Hoffman, 101 U. S. 112 57
Hall v. Equador Mining & Smelter, 11 Fed. Cases 222.. 58
Howard v. Bangor etc. Co., 86 Me. 387..... 58
Ex Parte Helett, 22 Nev. 333 58
Quick v. Whitewater Co., 7 Ind. 570..... 59
Brown vs. County Commissioners, 21 Pa. 37 59
Packer v. Sumbury & Erie Railroad, 19 Pa. 211..... 60
Alberton v. State, 9 Neb. 429 60
U. S. v. Jackson, 143 Fed 783..... 60
Sutherland Statutory Construction, 2 Ed. 349 62

No. 160

IN THE
SUPREME COURT
OF THE
UNITED STATES

A. A. TRUSKETT AND W. O. TRUSKETT,
Appellants,

vs.

FRED D. CLOSSER, *Appellee.*

APPEAL FROM THE
CIRCUIT COURT OF APPEALS OF THE UNITED STATES,
FOR THE EIGHTH CIRCUIT.

STATEMENT.

We believe the Appellants have sufficiently set forth the facts, but we do not agree with them that a decision in this case necessitates the determination of the one issue, presented by them.

ARGUMENT.

The first, second and third assignments of error raise but one proposition of law which is, did the District Courts of the State of Oklahoma have jurisdiction, subsequent to the Act of Congress, approved May 27, 1908, to confer upon a minor Cherokee Indian of one-eighth degree Indian blood, rights of majority, so that such minor Indian could make any valid conveyance of his allotment or any interest therein independent of, and without the supervision and approval of the Probate Courts of the State. Or stated in other words, as applied to the facts in this case, did the District Court of Washington County, Oklahoma, have jurisdiction to confer rights of majority upon Robert F. Goodman, on the 12th day of October, 1909, and after such decree, was Goodman qualified to execute a valid oil and gas mining lease on his allotment, in favor of Appellants.

Appellants have attempted to sustain the affirmative of this proposition. The negative is contended for by the Appellee.

As a preface to our argument, we desire to state that a decision of the principles involved in this case must be approached with that fundamental and ever pertinent principle of the Government always in view, that is, that in all legislation pertaining to the property and status of the Indians, Congress has had in view a principle of protection. Especially is this manifest in dealing with the legislation, affecting the members of the Five Civilized Tribes, one of

which the Cherokee, Robert F. Goodman, was a member. These Indian people were in truth and in fact a dependent people, wards of the Government; they and their lands were surrounded on all sides by an aggressive and avaricious people, who were eager to assimilate these inferior peoples not for the purpose of advancing these Indian tribes, but for the purpose of a selfish and pecuniary advantage to themselves. Hence, through necessity, the dominant principle prevailing in all Congressional Legislation, relative to the Indians, was one of protection in favor of a weak and dependent peoples, against a strong and independent.

While it is true that the decision of this case depends primarily on the construction of the Act of Congress, approved May 27, 1908, yet the basic foundation of appellant's argument is founded upon an Act of Oklahoma Territory, passed and approved March 5, 1895, the important sections of which, so far as applicable to the questions hereinafter presented, are set forth at page 17 of Appellant's brief.

It will be noted that this Act was passed by a legislature, which at the time had no jurisdiction whatever over the Cherokee Indians, and thirteen years prior to the Act of Congress approved May 27, 1908, and while this Act has now, by the Enabling Act of Oklahoma become the law of the State, yet when the Act was passed, it is certain that the legislative mind had no intention of removing restrictions from Indians at all, much less those of the Cherokee tribe, hence an examination into the origin of that Act, and its applicability as applied to Indian minors, becomes pertinent to the questions now raised.

In a recent decision of the United States Circuit Court of Appeals for the Eighth Circuit, the origin and applicability, of this Act to minor Indian allottees of the Five Civilized Tribes was ably discussed by the court. That case arose over the validity of an oil and gas lease, executed by a minor Creek Indian, nineteen years of age, on his homestead allotment, on March 7, 1908. Rights of majority having been conferred upon him by virtue of the statute of 1895, granting to the District Courts the right to confer upon minors the power to transact general or specific business, or make general or specific contracts or conveyances with the same effect as if they were of age. That statute, as said by the Court, afterwards became a general law of the State of Oklahoma. By virtue of the original Creek Agreement, Act of March 1, 1901, 31 Stat. L., 861, it was provided that no allotment of any Indian minor should be sold during his minority. It was the contention of the Appellee, in that case, that this law of Oklahoma Territory which subsequently became a law of the State of Oklahoma, was inapplicable to minor Indian allottees. The contention of the Appellants being that the law was applicable to all citizens including Indian minors. The Syllabus of that case reads as follows:

> "1. The restrictions on the alienation of their allotments by Creek minors, imposed by the Creek Agreements and Acts of Congress, were not subject to removal or modification either in duration or in effect, in March, 1908, by decrees of the District Court of Oklahoma, pursuant to section 4955-A, Snyder's Compiled Laws of Oklahoma, 1909, that such minors might transact general or specific business or make general or specific contracts or conveyances with the same effect as if they were of age. That law of the State of

Oklahoma, was inapplicable to such restrictions and to the right of such minors and of their grantees."

"2. Specific legislation upon a particular subject is not affected by a general law upon the same subject unless it clearly appears that the provisions of the two laws are so repugnant that the legislators must have intended by the later to modify or appeal the earlier legislation. The special act and the general law must stand together, the one as the law of the particular subject, and the other as the general law of the land."

In the course of its opinion the Court said:

"There was a law in Arkansas which had been in force in that state since 1869, found in section 1362 of Mansfield's Digest of the Laws of Arkansas, from which the law of Oklahoma of 1895 appears to have been copied, which authorized the circuit courts of Arkansas to empower minors to transact business as if they were of age. Congress extended many of the general laws of Arkansas over the Indian Territory, but it declined to put this law in force in that territory. On the other hand, it granted to the district courts of the Indian Territory the jurisdiction commonly given to probate courts full, complete, and exclusive jurisdiction of the leasing of the allotments of minors and incompetents (Act of April 26, 1906, c. 1876, 34 stat. 145, 148, paragraph 20,) of the guardianship of minors and incompetents, and of the administration of estates of descendants, whether Indians, freedmen or otherwise. Act of April 28, 1904, ss stat. 573, c. 1824, paragraph 2; *Morrison* v. *Burnette*, 154 Fed. 617, 621, 83 C. C. A. 391, 395."

"This therefore, was the situation when the State of Oklahoma was admitted into the Union and the Indian Territory became a part of it. The United States had prohibited the alienation of their homestead allotments by Creek minors except by means of the probate jurisdiction over them, their allotments, and the leases thereof, which it had vested exclusively in the district courts in the Indian Territory, sitting as probate courts, and

it had carefully withheld from those and all other courts the power to abolish, diminish or modify by adjudging that these minors might lease or sell their allotments as though they were adults, the restrictions upon the alienation of their lands which it had imposed. The jurisdiction over the leases and allotments of these minors, and over their guardianship, together with all the other probate jurisdiction of the district courts of Indian Territory, was transferred to and vested, not in the district courts of the State of Oklahoma, but in the county or probate courts of that state, when it was admitted into the Union on November 16, 1907. 34 stat. 277, paragraph 19; Act March 4, 1907, c. 2911, 34 stat. 1287, paragraph 3; Constitution of Oklahoma art 7, paragraph 12; Snyder's Comp. Laws of Oklahoma, 1909, page 88; Schedule of the Constitution of Oklahoma, paragraph 23; Snyder's Comp. Laws of Oklahoma, 1909, p. 140; *Davis v. Caruthers*, 22 Okla., 323, 97 Pac., 581, 583; *Eaves* v. *Mullen*, 25 Okla., 679, 107 Pac. 433, 436; *Burdette* v. *Burdette*, 26 Okla., 416, 109 Pac. 922, 924, 925, 35 L. R. A. (N. S.) 964. In addition to the watchful preservation of its control over these allotments which the legislation which has been recited evinces, the United States had expressly reserved its power over them and the alienation and incumbrance of them by the proviso to the first section of the Enabling Act of Oklahoma." * * * * * *

"The law of 1895, is a general law, applicable to minors in the state of Oklahoma, who are not governed by special legislation. The Creek agreements and the acts of Congress constitute, special legislation governing the restrictions imposed by the United States upon the alienation of the allotments of minor allottees, which excludes the general law from application thereto under the familiar rule that specific legislation upon a particular subject is not affected by a general law upon the same subject, unless it clearly appears that the provisions of the two laws are so repugnant that the legislators must have intended by the later to modify or

repeal the earlier act. Such does not appear to have been the intention of the legislators, in this case, and under such circumstances the special legislation and the general law must stand together; the one as the law of the particular subject, and the other as the general law of the land." (Citing authorities.)

Priddy v. *Thompson*, 204 Fed. 955.

The principle established in the above case will in substance be the contention of the Appellee in this case, that is, that the general law of the State of Oklahoma, granting to the District Courts of the State, the power to confer rights of majority on minor citizens, is inapplicable to Indian minor allottees of whom Goodman was one, because, a specific Act of Congress wherein reposed the exclusive jurisdiction over these Indian peoples by virtue of section one, of the enabling Act, admitting Oklahoma as a State, had made inapplicable to Indian minor allottees, the general law of the state.

That this Act of Oklahoma Territory approved March 5, 1895, which subsequently became a general law of the state of Oklahoma, and which appellants contend vested in the District Courts the power to confer upon Goodman the capacity to contract and thereby convey his allotment, is inapplicable to Indian minor allottees, is further illustrated by a review of the policy of the government as interpreted by judicial decisions in its dealing with the Indians, and especially with the members of the Five Civilized Tribes, of one of which the Cherokee, Robert F. Goodman was a member.

Prior to November 17, 1907, when the Indian Territory became a part of the State of Oklahoma, it cannot be denied that the absolute control and dominion over the persons and estates of the members of the Five Civilized Tribes was

vested in the Federal Government. And while prior to March 3, 1871, the Government dealt with the Indian Tribes in a manner, which at least to a certain extent, recognized and acknowledged that they possessed some of the attributes of nations with which the Government made and entered into treaties, yet subsequently to 1871, the evident policy of Congress has been to recognize the Indian Tribes, not as independent nations, but as dependent people, wards of the Government over whom it had absolute control, authority, power and dominion:

Lone Wolf v. *Hitchcock*, 187 U. S., 533.
In Re Heff, 197 U. S. 488.
United States v. *Celistine*, 215 U. S. 278.
United States v. *Sutoon*, Ibid 291.
United States v. *Allen*, 179 Fed. 13. Approved by this Court under the title of *Heckman* v. *United States*, 224 U. S. 413; 56 L. Ed. 821.

In the *Heff* case, Mr. Justice Brewer, delivering the opinion of the court, said:

> "In the early dealings of the Government with the Indian tribes the latter were recognized as possessing some of the attributes of nations, with which the former made treaties, and the policy of the Government was, sometimes by treaties and sometimes by the use of force, to put a stop to the wanderings of these tribes and locate them on some definite territory or reservation there establishing for them a communal or tribal life."

and quoting from the *Lone Wolf* case, said:

> "Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political

> one, not subject to be controlled by the judicial department of the Government."

and then continued as follows:

> "Of late years a new policy has found expression in the legislation of Congress—a policy which looks to the breaking up of tribal relations, the establishing of the separate Indians in individual homes free from national guardianship and charged with all the rights and obligations of citizens of the United States. Of the power of the Government to carry out this policy there can be no doubt. It is under no constitutional obligation to perpetually continue the relationship of guardian and ward. It may at any time abandon its guardianship, and leave the ward to assume, and be subject to all the privileges and burdens of one *sui juris*. And it is for Congress to determine when and how that relationship of guardianship shall be abandoned. It is not within the power of the courts to overrule the judgment of Congress."

The Government having abrogated to itself the supreme control and dominion over these Indian people, treating them as dependents, it was within its power to relinquish its supervision over them if it wished and delegate it to other sovereign powers or modify or extend at its will its restrictions over these people and their estates. The Government's power and authority in this respect has been referred to with aprpoval in the cases above citied.

The political status of the members of the Five Civilized Tribes, as well as the absolute control by the Federal Government over their person and estates remained unchanged by the passing of the Indian Territory into the State of Oklahoma. They still remained as alien people, dependent on the Government and subject to its exclusive control. *State ex rel*

Boyd, 31 Neb. 721, 48 N. W. 739; *Boyd* v. *State*, 143 U. S. 135, 36 L. Ed. 103; *United States* v. *Fitzgerald*, 201 Fed. 295, 119 C. C. A. 533; *Tiger* v. *Western Investment Co.*, 221 U. S. Rep. 286; and the state was without authority to extend its laws over these people residing within its limits without the consent of the Government. *Worcester* v. *Georgia*, 6 Pet. 515, 8 L. Ed. 483; *Fellows* v. *Blacksmith*, U. S. 15 L. Ed. 684; *U. S.* v. *Kagama*, 118 U. S. 384, 30 E. Ed. 230.

The Government not content with the decisions of the courts which had heretofore recognized in it the absolute control and sole authority over these dependent people, or if content, wishing to leave no doubt as to its authority and control and to remove any and all opportunity for a dual jurisdiction or conflict thereof, insisted that there be incorporated into the enabling act of Oklahoma, and to become a part of its organic law, the following clause:

> Section 1. "That the inhabitants of all that part of the area of the United States now constituting the Territory of Oklahoma, and the Indian Territory, as at present described, may adopt a constitution and become the State of Oklahoma as hereinafter provided; Provided, that nothing contained in the said constitution shall be construed to limit or impair the said *rights* of *persons* or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished) or to limit or affect the authority of the Government of the United States, to make any law or regulation respecting *such Indians* their land, *property or other rights* by treaties, agreement, law or otherwise, which it would have been competent to make if this Act had never been passed."

It is apparent from this that the Government ever mindful that in it rested the full authority and control over these inferior people, expressly reserved to itself the power and authority which it formerly maintained, the exclusive control and dominion *over the persons* and property rights of the members of the Five Civilized Tribes.

This power being vested in the Federal Government and reserved to it in the first section of the Enabling Act, the State of Oklahoma could enact no law affecting *the person* or property rights of these people, or exercise any control over them either directly or indirectly, except as the Federal Government relinquished its exclusive right and authority over and delegated it in part or in whole to the Government of the state.

It is said by Appellants that Congress possessed no power to confer jurisdiction upon the State Courts of Oklahoma. It is unnecessary to enter into a discussion of that question, though in passing, it may be noted that Congress does and has heretofore conferred upon the various courts of the different states, the power to admit foreign citizens to citizenship of the United States, which power has been universally exercised by these State Courts. But Congress certainly could, since it retained the exclusive jurisdiction over the *person* and property of the Indians, say to Oklahoma or any other state, what courts or instrumentalities of that state could exercise jurisdiction over its wards. If it could not confer, it certainly could permit the exercise of the jurisdiction it formerly maintained, and by whatever courts of the State, which in its judgment it deemed best suitable to carry out its policy of protection.

It is further argued by Appellants that there can be no substantial distinction, so far as affording protection to the minor Indian allottees is concerned, by subjecting these peoples and their property to the general laws of the state, or in other words to the District Courts, instead of limiting the jurisdiction of the state courts to the probate courts. Manifestly Congress thought otherwise, realizing that the District Courts were courts of almost unlimited jurisdiction, so far as the person and property rights of these people were concerned, while the probate courts were courts of very limited jurisdiction, and their powers concretely defined, and whose limited jurisdiction could not therefore be the instrumentality of depriving these people of the protection Congress deemed necessary for their ultimate good.

The exclusive jurisdiction and control over the person and property of the Five Civilized Tribes being, therefore, in the Federal Government, whatever delegation there is of that power or authority to the State Government, must be by virtue of an Act of Congress. Congress has relinquished partially its control over the members of the Five Civilized Tribes, and has partially delegated to the State of Oklahoma, its jurisdiction and authority over the person and property of these people, subject however, to certain limitations, and that delegated authority, with its qualifications, so far as the questions raised in this case are concerned, is found in the Act of Congress of May 27, 1908, (35 Stat. L. 312) entitled:

> "An Act for the removal of restrictions from part of the lands of allottees of the Five Civilized Tribes, *and for other purposes.*"

The second section of this Act provides:

> "That the jurisdiction of the probate courts of the State of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provisions and *the term minor or minors, as used in this Act, shall include all males under the age of twenty-one years, and all females under the age of eighteen years.*"

The sixth section of this Act provides:

> "That the *persons* and property of *minor allottees* of the Five Civilized Tribes shall, except as otherwise specifically provided by law, be subject to the jurisdiction of the probate courts of the State of Oklahoma."

The passage of this Act, clothed a large number of the members of the Five Civilized Tribes with a degree of citizenship which they had not theretofore enjoyed: But it did not thereby make inconsistent the Government's guardianship over them:

> *Cherokee Nation* v. *Hichcock*, 187 U. S. 307.
> *Lone Wolf* v. *Hitchcock, Supra.*
> *United States v. Ritchie*, 188 U. S., 432.
> *United States* v. *Fitzgerald, Supra.*
> *Tiger* v. *Western Investment Co. Supra.*

When Congress, as it did in this Act of May 27, 1908, remove restrictions upon alienation by Indians, of their allotments of land, can it impose conditions upon such alienation? Without fear of serious denial we unhesitatingly answer this question in the affirmative.

In the case of *In Re Heff Supra* (197 U. S. 489), Mr. Justice Brewer said:

> "Undoubtedly an allottee can enforce his right to an interest in the tribal or other property (for that right is expressly granted): and equally clear is it that Congress may *enforce and protect any condition which it*

attaches to any of its grants." This it may do by appropriate proceedings in either a national or a state court. But the fact that property is held subject to a condition against alienation does not affect the civil or political status of the holder of the title. Many a tract of land is conveyed with conditions subsequent. A minor may not alienate his lands; and the proper tribunal may, at the instance of the rightful party, enforce all restraints upon alienation."

All the authorities which we have examined show and hold clearly that Congress has and always has had the interest of the Indian at heart. It may have erred at times as to the best methods of uplifting and caring for its unlettered wards, yet none can deny its evident purpose to protect its wards, and strange would it be now, after all its years of care and attention, for Congress to turn its wards adrift without assistance or protection. It must be therefore that whatever restrictions it has placed upon alienation of their allotments of these untutored and dependent people, were solely for their aid and protection, and should be enforced.

In construing this very Act of Congress, now under consideration, by us, the Court in *United States* v. *Allen, Supra* said:

> "In its dealings with the Five Civilized Nations, Congress has been at great pains to indicate a different purpose. Here it has from time to time, down to the organic act admitting Oklahoma and the provisions which it insisted should be embodied in the constitution of that state, reserved to itself express authority to pass such laws with respect both to the Indians and their lands, as shall in its judgment seem wise * * * * The grant of citzenship to the members of the Five Nations, was intended for their protection, and not to strip them of the protection of the national government. It

> was, in our judgment, never the intent of Congress to deprive itself of the authority which it had always exercised to adopt such measures as in its judgment were wise for the protection of the Indian in his rights among the more highly developed members of the white race * * * * clothing them with citizenship did not change their character or invest them with full industrial capacity. These records are eloquent on that subject. An intent to destroy the authority of the National Government to protect the Indian ought not to be deduced as a mere speculative inference from the definition of citizenship. Such a radical change of national policy should emanate only from express and unequivocal language.

Ever mindful therefor of the policy of the Government as thus judicially interpreted, Appellee's contention is this:

That by the Act of May 27, 1908, construed in its entirety, and it is only such that it can be construed, all restrictions over the person and property of minor Cherokee allottees were removed, so far as Government control was concerned, provided that they should remain minors for that period of time defined by the act; that is in case of males until they reached the age of twenty-one years, and in case of females until they reached the age of eighteen years, and provided further that their *person* and *their property* should remain under the exclusive jurisdiction of the probate courts of the State of Oklahoma, and that any general law of the state, which might operate so as to change the personal status of the minor Indian allottees, as defined by the Government, or deprive the probate courts of their control over the person and property of these people, is inapplicable because of specific legislation by Congress, relating thereto.

It is only such an interpretation that can harmonize with the policy of the Government in its dealings and administration of the affairs of its dependent wards. To accord to the district courts of the State of Oklahoma, the jurisdiction to alter the terms of minority of these minor wards of the Government as defined in the Act of May 27, 1908, is an absolute negation of the intent of Congress, defining the period of minority of these peoples and conferring jurisdiction solely in the probate courts. Any other hypothesis destroys the protectorate policy of the Government that has always sought to elevate these dependent people to a higher civilization and citizenship by encouraging them to retain and cultivate their individual allotments. To confer contractional rights on these minors through the jurisdiction of the district courts of the State of Oklahoma, would enable them to alienate their allotments as was done in this case, and thus absolutely defy the policy of the Government and its laws passed in pursuance thereof.

We come now to the paramount issue in this case, that is, in whom is vested the exclusive right to determine the *personal status* of these minor Indian citizens. Is that exclusive right vested in the Federal Government, or is it within the exclusive sovereign power of the State of Oklahoma?

Appellant's inform us at page 11. of their brief that they are not unmindful of the decision of this court, collected in the case of *Tiger* v. *Western Investment Company*, 221 U. S. Rep., 286. And then they proceed to determine the

extent of that decision, and then make this general deduction; we quote their own language:

> "Conceding this to be the law, we still contend that when Congress declared these Indians to be citizens of the United States, and of the State of Oklahoma, it thereby released to the state the right to fix their status as adults or minors * * * *. If this reasoning is sound, the State of Oklahoma at all times after its admission, possessed the power to fix the status of Goodman, as an adult, or as a minor. Clearly enough, if, under the laws of the State, he was an adult, he could contract with the respect to all such personal property of which he was possessed, provided, this was tribal property. Moreover and for the same reason, he could contract with respect to any real estate owned by him, which came to him under the ordinary laws, instead of coming to him as a member of an Indian tribe. If these things be true, then there is just one single circumstance which interfered with the validity of appellant's lease, namely a restriction imposed upon the lands covered thereby; that is, a restriction or a restraint on alienation that was laid upon or attached to the land itself as distinguished from a disability attaching to Goodman personally."

Assuming this principle to be true, Appellant's arrive at a result that harmonizes with their theory. But without fear of serious contradiction, we deny the truth of this premises. It is in direct conflict with section one of the Enabling Act, wherein Congress reserved to itself the authority to make:

> "Any law or regulation respecting such *Indians*, their lands, property or *other rights*, by treaties, agreements, law or otherwise, which it would have been competent to make, if this act had never been passed."

It is in direct conflict with the act of May 27, 1908, wherein Congress determined the status of these people so

far as minority was concerned. It is in direct conflict with said Act, wherein Congress vested exclusive control over these peoples and their property, in the probate courts of the state, and it is in direct conflict with the decisions of every court, both State and National, that have had occasion to decide these questions.

It is not true, and we shall never admit that:

> "There is just one single circumstance which interfered with the validity of Appellant's lease, namely, a restriction or a restraint on alienation, that was laid upon or attached to the land itself, as distinguished from a disability attaching to Goodman personally."

Why? because his personal status was positively restricted to minority until he attained the age of twenty-one years, and being a minor, therefore, could not make a valid contract for any purpose.

Appellants have sought to impress upon the court a distinction between a disability, minority, which affects the individual status of the allottee, and a restriction on the alienation of property, and in this we agree. But the premises, as assumed by Appellants, ignores or attempts to strike down the very distinction they seek to impress.

Instantly we inquire why Congress could not determine the status of these people by defining the period of minority. The power of the sovereign to define the period of minority of its people is not incompatable with citizenship. If it is, then every minor citizen in this country, be he Indian, Negro or white, maintains a position of inconsistency with

the citizenship accorded him. Could not the Government with whom and in whom was vested the exclusive control of these people make any law or regulation respecting these people, which in its judgment it might determine best for their general good. If it could not, then what effect or interpretation is to be accorded to that plain and unambiguous language in the first section of the Enabling Act, which says:

> "Provided that nothing contained in the said constitution, (and if it could not be contained in the constitution, it necessarily follows it could not be contained in the Act of the Legislature) shall be construed to limit or impair the said rights of persons or property, pertaining to the Indians of said territory, so long as such rights shall remain unextinguished, or to limit or affect the authority of the Government of the United States, to make any law or regulation respecting *such Indians*, their lands, property or other rights, by treaties, agreements, law or otherwise, which it would have been competent to make if this Act had never been passed."

We repeat that it was within the sovereign power of Congress and it alone, to define the status of these, its minor wards, by determining the period of their minority. The decision in the case of *Tiger* v. *Western Investment Company, Supra,* recognizes and affirms this right, for it is therein stated that:

> "In passing the Enabling Act, for the admission of the State of Oklahoma, where these lands are, Congress was careful to preserve the authority of the Government of the United States over the Indians and their land and property, which it had prior to the passage of the act.
>
> 34 Stat. 267.

It does not follow therefore, as Appellants assume, that Goodman's civil status was a subject for state legislation, and that it would be necessary therefore to refer to the laws of the State of Oklahoma, to determine whether Goodman was an adult or a minor. Such an assumption, we repeat is in direct conflict with the Act of May 27, 1908; in direct conflict with section one, of the Enabling Act admitting Oklahoma into the Union, and in direct conflict with the decisions of the courts that have been called upon to construe this legislation.

Incorporated in section one, of the Enabling Act of the State of Oklahoma, is this language:

> "Section 1. That the inhabitants of all that part of the area of the United States now constituting the Territory of Oklahoma and the Indian Territory, as at present described, may adopt a constitution and become the State of Oklahoma as hereinafter provided; Provided, That nothing contained in the said constitution shall be construed to limit or impair the said rights of persons or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished) or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such *Indians*, their lands, property or other rights by treaties, agreement, law or otherwise, which it would have been competent to make if this Act had never been passed."

What more positive declaration by Congress do Appellants deem necessary than this direct expression, that in Congress alone should repose the authority and jurisdiction to determine the final status of these Indian people and their lands. Congress ever mindful that it had reserved this jurisdiction to itself proceeded to establish the status of these

minor Indian wards, in the act of May 27, 1908, which was the first legislation upon the part of Congress dealing with the Indians after the admission of Oklahoma into the Union. Did Congress say that the status of these people from whom it had removed its supervision should be determined by the general laws of Oklahoma? Certain it is that it did not. Knowing what these laws were, or what they might be, Congress spoke to the contrary, saying in the *second* section of the Act of May 27, 1908:

> "That the jurisdiction of the probate courts of the State of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provisions, and the term minor or minors as used in this *act* shall include all males under the age of twenty-one years, and all females under the age of eighteen years."

And also saying in the Sixth section of said act:

> "That the persons and property of *minor allottees* of the Five Civilized Tribes, shall, except as otherwise specifically provided by law be subject to the jurisdiction of the probate courts of the State of Oklahoma."

Can this clear, unambiguous and positive English be susceptible of the interpretation contended for by Appellants? When we are to determine whether Goodman was a minor or an adult on the 12th day of October, 1909, shall we as Appellants contend, resort to the laws of Oklahoma, or shall we resort to the laws of Congress, as above expressed, for our guidance. The mere fact that citzenship has been conferred on Goodman, and upon those of the class to which he belonged, did not deprive the Government of its control over him. We quote again the language of the Circuit Court of

Appeals when it said in the case of the *United States* v. *Allen, Supra,* in construing this very act:

> "The grant of citzenship to the members of the Five Nations was intended for their protection, and not to strip them of the protection of the National Government. It was in our judgment, never the intent of Congress to deprive itself of the authority which it had always exercised to adopt such measures as in its judgment were wise for the protection of the Indian in his rights among the more highly developed members of the white race. * * * Clothing them with citizenship did not change their character or invest them with full industrial capacity. These records are eloquent on that subject. An intent to destroy the authority of the National Government to protect the Indian ought not to be deduced as a mere speculative inference from the definition of citizenship."

And to the same effect are the decisions in the cases of the

> *Cherokee Nation* v. *Hitchcock,* 187 U. S., 307;
> *Lone Wolf.* v. *Hitchcock,* 187 U. S., 533;
> *United States v. Ritchie,* 188 U. S., 432;
> *United States* v. *Fitzgerald,* 201 Fed., 295;

and in the case of:

> *Tiger* v. *The Western Investment Company,* 221 U. S. 286, 55 L. Ed., 738.

This Court speaking through Mr. Justice Day, said:

> "Taking these decisions together, it may be taken as the settled doctrine of this Court that Congress in pursuance of the long established policy of the Government has a right to determine for itself when the guardianship which has been maintained over the Indian shall case. * * * * The privileges and immunities of federal citizenship has never been held to prevent Governmental authority from placing such restraints upon the conduct or property of citzens as is necessary for the general good.

"Incompetent persons, though citizens, may not have the full right to control *their persons* and property. The privileges and immunities of citizenship were said, in the Slaughter House cases:

16 Wall, 36-76, to comprehend—

"Protection by the Government with the right to acquire and possess property of every kind and to pursue and obtain happiness and safety, subject nevertheless to such restraint as the Government may prescribe for the general good of the whole."

In view of the express declaration of Congres, and its policy as interpreted by the decisions above referred to, we unhesitatingly answer and say to appellants that the status of Robert Goodman and of those of his class, is not to be dedetermined by the laws of Oklahoma, but by the legislation of Congress, and by that supreme authority alone. That in the absence of a delegation by Congress of its jurisdiction over these dependent people, the District Courts of Oklahoma, deriving their power and jurisdiction from the laws of Oklahoma, did not have jurisdiction to confer the rights of majority on Robert F. Goodman, and that instead of the conclusion deduced by Appellants this conclusion should be substituted, *i. e.* that such a decree was absolutely void, and conferred upon Goodman no power or authority whatever. Because by a specific Act of Congress this general law of the state was made inapplicable.

Obviously this answers Appellant's question, Why Goodman could not contract with reference to his allotment? Because he could not make a valid contract before he became of the actual age of twenty-one years, for any purpose. True it is, and we will never deny that by the Act of May 27, 1908,

restrictions over his lands were removed, so far as Governmental control was concerned, but always provided that he should remain a minor until he arrived at the age of twenty-one years, and always provided that pending the attainment of that age *his person* and his property should be subject to the jurisdiction solely of the probate courts of the State of Oklahoma.

The Indians have long been under the care of Congress. They have not been permitted to act, think and speak for themselves. They have not therefore had much severe business training, and even after arriving of lawful age are not in a condition or position to trade, and are ill prepared to contract and deal with their more shrewd and skilled white brothers. What more natural thing therefore then, that Congress should protect the Indian youth with the shield of minority, and the supervision of the Orphans' court as long as possible that he might the better meet and defend himself against his shrewd and keen white brothers.

Appellants have advised the Court that in our interpretation of the Act of May 27, 1908, we would attempt to qualify the operations of section one, by what follows in sections *two* and *six*. But before doing so, we desire at this time to call the attention of the Court to the case of:

Jefferson v. *Winkler*, 26 Okla., 653, 110 Pac. 755;

decided by the Supreme Court of Oklahoma, July 12, 1910, and which is decisive of the issues involved in this case. In that case the Court dwells at length upon the effect of sections two and six in connection with section one. The argument of that Court is a conclusive answer to the argument of Appellants upon this question.

The case arose over Rebecca Johnson, a Creek Indian, of sufficient white blood in her veins that all restrictions upon the alienation of her lands had been wholly removed by the said Act of May 27, 1908. That this must be true, appears from the following language of Mr. Justice Hays, the organ of the Court:

> "Rebecca Johnson is an allottee of the first-class provided for in said section; and after the act became effective the restriction upon her power to alienate her allotted lands were removed without any limitations or conditions imposed by *Federal act or treaty*, and she held the same as other minor citizens of the United States, and of this state hold their property."

But she was a minor, under the age of eighteen years, and could not therefore sell her allotment. On May 13, 1908, she was legally married, and on August 21, 1908, her husband joining, she sold her lands to one, Winkler. This sale was made without order of any probate court of Oklahoma. About six months afterward her guardian petitioned the proper probate court of Oklahoma for permission to sell the allotment of his ward, which permission was granted over the protest and objection of Winkler, who then secured an injunction from the District Court against executing the order of sale, and therefore the guardian appealed.

In the case at bar our opponents contend that Goodman had the right to lease and sell, because his disability of minority was removed by his compliance with the said statute of Oklahoma, allowing such removal.

In the *Jefferson-Winkler case* it was contended that the minor had a right to sell, because her marriage removed her

disability of minority by virtue of the statute of Oklahoma of March 12, 1897, reading as follows:

> "All male persons of the age of twenty-one, and all females of the age of eighteen years, and all persons *who have legally married of whatever age* and all corporations to the extent authorized by law, may take title to, hold, mortgage, convey or make any contract relating to real estate or any interest therein." (The italics are those of Mr. Justice Hays).

This act was construed by the learned Justice as follows:

> "This statute specifically confers upon married persons of whatever age, power to control and dispose by contract of their real estate or any interest therein."

The guardian contended the foregoing Act of Oklahoma did not apply because it conflicted with the said Act of Congress of May 27, 1908. The learned Justice then quotes at length section one of the Act, and by italicising the same, calls attention to the fact that the words "including minors" are used three distinct times in this section and says that restriction upon the alienation by Rebecca Johnson of her lands are wholly removed unless limited by other sections of the act. He then quotes section two of the act including the portion thereof which we ourselves have quoted above. He then quotes the portion of section six, which we have given above.

The learned Justice then gives the contention of the guardian, which is the same as that of Appellee in the case at bar. He says:

> "It is insisted by plaintiff in error that these two sections constitute in effect a proviso to that part of section 1, which removes the restrictions from minor allottees of less than half Indian blood and makes the removal of such restrictions conditioned upon an order of some

probate court of the state for the sale of such restricted property, until the minor, if a female, reaches the age of eighteen, and, if a male, the age of twenty-one. In other words that Congress intended to direct that the probate courts of the state should take and retain jurisdiction of the theretofore restricted lands of minor allottees until such minor become of the age of eighteen, if a female, and of the age of twenty-one, if a male, notwithstanding that such minor may marry before reaching such age."

Then the writer of the opinion gives the contention of Winkler, which is the same as that of the Appellants in the case at bar:

"It is contended by defendant in error, on the other hand, that the provisions of these two sections have no relation to and do not affect section 1."

But the Court declines to follow this contention, saying through its organ:

"With this contention we cannot agree."

The learned Justice then quotes section one, of the Enabling Act, which we have given above. And then speaks of the question which has been pressed by our opponents, that the reference to minors contained in the second section of the Act of May 27, 1908, has no relation to the first section. He declares this contention to be falacious. His logic, which is clear and unaswerable, is as follows:

"Section 2 defines a minor to be a female under the age of eighteen years; of a male under the age of twenty-one years. It is true that this definition occurs in a proviso of said section 2, and we do not forget that one of the general rules of statutory construction applicable to provisos is that a proviso is intended to restrict or qualify some preceding matter and does not apply to matter which follows and that it should be construed

with reference to the immediately preceding part or clause of the section to which it is attached; but this rule is not without is exceptions, and where it is plainly intended that such proviso shall limit, qualify or define other sections or provisions of the act than that of which it forms a part, the court should give it such meaning. 2 *Lewis' Sutherland*, Statutory Construction. If the proviso defining the term 'minor' or 'minors' had read, 'and provided further that the jurisdiction of the probate courts of the State of Oklahoma, over lands of said minors and incompetents, shall be subject to the foregoing provisions and the terms minor or minors shall include males under the age of eighteen years' we think the foregoing general rule of construction applicable to provisos would apply, and said proviso would have application only to the provisions of section 2, but there is inserted in said proviso and immediately after the words 'minor' and 'minors' the phrase as used in this act, manifesting thereby, we think an intent to define said terms as used in the various provisions of the act. It will be noted, that by section 2, the United States Government consents to and confers upon the probate courts of the state, jurisdiction over the restricted lands of certain minor allottees for the purpose of leasing same for a period not to exceed five years. In order that no doubt might arise as to who was inteded to be included in the term 'minors' and that there should be no conflict between the courts of the State and the Federal Government in the exercise respectively of their jurisdiction over said minors, Congress deemed it necessary to define the term. There occurs in section 6 another proviso, which reads: 'And provided that no restricted lands of living minors, shall be sold or incumbered, except by lease authorized by law, by order of the court or otherwise.' Here again a limitation is placed upon the power of the state courts over the restricted lands of minors, and it will not be presumed that Congress intended to define the term 'minors' as used in section 2

in order that no confusion might arise and leave the same undefined as used in the foregoing proviso in section 6, when the definition made in section 2 is in language making it applicable wherever the term occurs in the act. As before stated, the language of section 1, removing the restrictions upon lands of Indian allottees of less than half Indian blood, if read and construed alone, independent of the other provisions of the act, constitutes an unconditional removal of said restrictions and renders said allotted lands subject to the control of said allottees under the law of the state just as other citizens of the state own and control their property. That said section is not to be construed and enforced independent of other sections of the act is clearly manifest by reading sections 3, 4 and 5. Section 3 prescribes how *quantum* of Indian blood and the age of such allottees shall be determined, and section 4 provides that said lands shall not be subject or held liable to any form of personal claim or demand against the allottees arising or existing prior to the removal of said restrictions other than contracts theretofore expressly permitted by law, and section 5 makes void any attempted alienation or incumbrance by deed, mortgage, contract of sale or power of attorney made before or after the approval of the act affecting the title of lands prior to the removal of restrictions therefrom. Immediately following the foregoing sections, all of which have bearing upon the lands dealt with in section 1 of the act, occurs the provisions of section 6, which provides that the property of minor allottees of the Five Civilized Tribes shall be subject to the jurisdiction of probate courts of the state, except as otherwise specifically provided by law. Just as the removal of restrictions effected by section 1 upon the lands of both adult and minor allottees of certain classes are limited by the provisions of sections 4 and 5, which renders said lands not liable to certain claims or demands against said allottees or subject to certain contracts, deed or incumbrances that may have been exe-

cuted by them, so the removal of restrictions upon the lands of minors is limited by the requirement of section 6, that said property of minor allottees shall be subject to the jurisdiction of the probate courts of the state and the term 'minor allottees' as defined by section 2, means males under the age of twenty-one, and females under the age of eighteen years. In other words construing all of the foregoing provisions of said act together, we think it was the legislative intent to provide that the allotted lands of freedman and mixed blood, Indians having less than half Indian blood, under the age of eighteen, if a female, and under the age of twenty-one, if a male, may be sold under the supervision and jurisdiction of the probate courts of the state *and not otherwise*. It therefore follows that since Rebecca Johnson was not eighteen years of age at the time she conveyed the land in controversy to defendant in error, and the sale to him was not made under the supervision and order of any probate court of the state, he acquired no title thereby and has not sufficient interest in the lands in controversy to entitle him to maintain this action."

The logic of this case is sound, and rules the case at bar. There, as here, it was attempted to remove the disability of minority by applying an act of Oklahoma authorizing such removal; but such attempt was declared void as being in conflict with the Act of Congress of May 27, 1908, which declared that the word "minor" "as used in this act," shall include males under twenty-one and females under eighteen. If it had been in the mind of Congress to restrict the definition of the word "minor" to the second section, it could easily have declared its intention by saying: "The term minor or minors as used in this *section* shall include all males under twenty-one and all females under eighteen."

The principle established in the *Winkler case*, has been

re-affirmed by the Supreme Court of Oklahoma, in the following cases:

Walker v. *Brown*, 141 Pac., 681;
Dodd v. *Cook*, 137 Pac., 348;
Tiery v. *Darnell*, 133 Pac., ~~765~~ 644
Kirkpatrick v. *Burgess*, 116 Pac., ~~647~~ 764
Gill v. *Hoggarty*, 122 Pac., 641;
Bruner v. *Cobb*, 131 Pac., 165;
Cochran v. *Teehee*, 138 Pac., 563;

and by the Circuit Court of Appeals, for the Eighth Circuit, in the case of:

Barbee v. Hood, 214 Fed., 473;
Bell v. *Cook*, 192 Fed., 579.

It has been argued at length that this definition should be confined to the very section in which it is found, but this cannot be in the light of that general and universal rule of statutory construction that in the interpretation of an act, one cannot divide the act, taking to himself that portion which benefits him and serves his purpose and disregarding those portions which interprets or modifies other clauses of the act and which do not please him.

An act of the legislature must be construed in toto and particular sentences, phrases, or portions cannot be taken separately to ascertain the legislative mind. The act must be interpreted within its four corners and not by one corner at the expense of another. The language of the act in question is plain and unambiguous and its meaning can be ascer-

tained easily, and no strained construction is necessary to ascertain the mind of Congress.

Appellants have endeavored to impress upon the court a distinction between the disability of minority and the disability arising by virtue of a positive restrction on the alienation of lands, and that the question of minority or majority is one which relates to the person and civil status of the individual. This argument was strongly advocated by counsel for appellants on the argument of this case in the court below, and the deduction made was that Congress, could prescribe no different rule of majority or minority in the case of Indian citizens of the United States from the rule applicable in the case of white citizens of the United States residing in the Indian Territory. We agree that the distinction should be made but deny that it is susceptible of any such deduction or conclusion. Such a conclusion is in direct conflict with the policy of the Government heretofore referred to, and in direct conflict with all the decisions that have interpreted the legislation of Congress, applicable to the Indian people, including those decisions, *Supra.* It stands unsupported and with no authority upon which to base it, and is squarely contradicted by the Supreme Court of Oklahoma in the case of *Jefferson* v. *Winkler, Supra.*

In that case Rebecca Johnson, an Indian with sufficient white blood in her veins to enable her to fully alienate her land under the act of May 27, 1908, had she not been a minor by the express language of that act, married. It was contended that this marriage gave her full power to sell her lands. If the contention of our opponents is true, this result would inevitably follow, because marriage by the laws of

Oklahoma, immediately endowed a minor with power to convey lands. According to the doctrine which the appellants promulgate no other result could possibly follow for they contend there can be no different rule relative to personal status in the case of Indian citizens of the United States from the rule applicable in the case of white citizens residing in the Indian Territory, and as marriage *ipso facto* removed the disability of minority upon white persons, it must with equal force remove that upon Indians, for as they contend there can be no different rule for one citizen than for another; but unfortunately for appellants the supreme court of Oklahoma without a dissenting member held that there *could* be a different rule for an Indian than for a white man, and in view of the Act of May 27, 1908, the disability of minority could not be removed from the Indians notwithstanding a general statute of that state which permitted the termination of minority by lawful marriage. Why? Because the power of Congress over its Indian wards, their status and their property is supreme. Having the welfare of the Indians exclusively within its control, it could determine their status to be that which in its judgment would subserve best their protection.. As to minors, this supreme authority has directed their affairs to be conserved by the probate courts of Oklahoma, and has defined the meaning of the word "minor" as used in this act. This supreme power is expressly reserved to Congress under section *one* of the Enabling Act, from which we have heretofore quoted. Under this reservation, authority of the Indian and his affairs is expressly reserved to Congress as fully as if the Enabling Act "had never been passed." When the Supreme

Court of Oklahoma declares the power of Congress over these Indians to be supreme and that no power existed in the state to declare an Indian of majority before the time designated in the act of 1908, and that when the word minor is used in the act, it means exactly what Congress defines it to be. It is idle to continue this argument further except to point to the fact that the court of denier resort in the State of Oklahoma has declared that its general law removing the disability of minority *does not apply* to Indian minors as defined by Congress,

IT IS PECULIARLY WITHIN THE PROVINCE OF THE COURTS OF A STATE TO INTERPRET THE LAWS OF THAT STATE, AND WHEN THE COURTS OF OKLAHOMA, DO SO, AND DECLARE THAT STATE LAWS REMOVING THE DISABILITY OF MINORITY DO NOT EXTEND TO INDIAN MINORS AS DEFINED BY THE ACT OF CONGRESS OF MAY 27, 1908, SUCH INTERPRETATION ENDS THE ARGUMENT.

Appellants have correctly anticipated that we would contend that while restrictions were removed by the Act of May 27, 1908, yet supervising control was continued through the instrumentality of the probate courts of the state. The anticipation is well founded, and we confidently assert that

the logic of this conclusion is in no way impaired by the argument of appellants. The Act of May 27, 1908, did remove the restrictions from Goodman, so far as Governmental control was concerned, qualified however as positively stated in the act, and it must be borne in mind that this language is that of the supreme authority over the Indians, that these minor Cherokee citizens should remain minors in case of females until they attain the age of eighteen years, and in the case of males until they attain the age of twenty-one years. One is convinced, that Congress when it passed the Act of 1908, must have had before it the act of Oklahoma Territory of Morch 5, 1895, allowing the disability of minors to be removed before they came of lawful age, or else Congress feared that the state of Oklahoma would pass some law, allowing these unlearned people complete control of their property without the restraining influence of the probate courts, before they had arrived of an age which Congress thought would render them capable of transacting their own business; otherwise Congress would never had inserted the express provision that *everywhere* in the act the term minor or minors should embrace males of the age of twenty-one years, and females of the age of eighteen years.

Our opponents argue at length in discussing the effect that sections two and six have upon section one of the Act of May 27, 1908, that provisos should be construed with reference to the subject matter of the sentences of which it forms a part, but Judge Adams, declares in *U. S. Berneys*, 158 Fed. 793,

"that this rule does not apply if it appears that the

proviso was designated by the legislative mind for a broader or more independent operation."

Our opponents would restrict the proviso to the second section but the proviso in express language says that it shall *apply to the entire act,* and we challenge the right of counsel or any one to change the plain and express language of a statute to meet their personal ends. This would not be interpretation or construction, but legislation, and that power is in Congress, and not in our opponents. Everyone knows that Congress has the good of the Indian at heart, and has always been more attentive to his needs than the states. What more natural thing therefore than that Congress should desire to, as it did, to surround the Indian with the protection of an Orphan's Court to prevent any attempt of the state to place him or his property at the mercy of designing men, before he had arrived at such a mature age that he could protect himself. This was the evil which Congress intended to and did prevent.

The analysis by the Supreme Court in the *Winkler case, Supra,* relative to sections *two* and *six* in conjunction with section *one,* is clear, logical and concise, and perhaps more convincing than could be stated by us. An extended argument on our part therefore on this question would be mere repetition.

Appellants take this position. They admit that the probate courts have jurisdiction over the person and estates of those who are actually minors, but they say the probate courts did not have jurisdiction over a case of this character, because Goodman, was not a minor, and he was not a minor

for the reason that there was a general law in Oklahoma that could change his personal *status*, namely the law of conferring majority rights; in other words that the question of minority or majority is determined by the general laws of Oklahoma in the case of allottees from whose lands all restrictions have been removed.

Appellants argue their case away. They are forced to concede that the probate courts of Oklahoma alone have jurisdiction over minors, but they contend, relying on the expression "except as otherwise provided by law" that Goodman is not a minor because a general law of Oklahoma which they would include within the expression "except as otherwise provided by law" allows the disability of minority to be removed from him before he was twenty-one years of age. Unfortunately for appellants the Supreme Judicial authority in the state of Oklahoma, the ultimate authority that declares the scope and power of its own laws, has held in the *Winkler case, Supra.*, that Oklahoma does *not* have *the* power to remove the disability of minority of a minor, one-eighth degree Cherokee Indian, because it is otherwise provided by Federal Law. The Act of 1908 holds that how long an Indian should remain a minor is within the discretion of Congress, and Congress having declared that Robert Goodman should remain a minor until he was twenty-one years of age, and its word being the supreme law, its mandate must be obeyed.

Appellants take refuge in this expression in section six: "Except as otherwise provided by law," contending that it takes away from the probate courts the jurisdiction over minors whose rights of majority have been conferred upon

them, because those rights were conferred by the laws of Oklahoma, and say that by this expression Congress could not have meant Federal Laws.

We answer emphatically that it was Federal Laws, and no other that Congress referred to. To accord to the expression the meaning contended for by appellants is to say that Congress gave the keeping of these Indians children into the protection and jurisdiction of the probate courts of Oklahoma, except as Oklahoma might otherwise ordain. Such construction makes nugatory the policy of the Government to guard these Indian children by placing them under the protection of Orphan Courts, and under the theory of appellants Oklahoma might absolutely and entirely destroy the protection that Congress had sought to place around these dependent people.

Obviously it was never the intention of Congress to place in the state of Oklahoma, an instrumentality to destroy its time honored policy of protection to these Indian children. What was intended we insist by this expression was Federal Laws, that is that the person and property of these children should be under the jurisdiction of the probate courts of the state of Oklahoma, unless Congress should otherwise specifically provide. We agree with our opponents that all restrictions so far as the approval of the Secretary of the Interior is concerned, or so far as Governmental supervision is concerned, were removed by the Act of May 27, 1908. And they agree with us that after the passage of the act Goodman's person and estate was within the jurisdiction of the probate courts of the state of Oklahoma, until that jurisdiction should terminate. But we disagree as to when

that jurisdiction ends. They contending that it terminates according to the general laws of Oklahoma, while we insist that it terminates only when Robert Goodman actually became of the age of twenty-one years, or in other words until he attained the age of majority as defined by Federal Law. We have on our side the express language of Congress, which is supreme upon such matters, that such jurisdiction should terminate only when the minor came of the age specified in the act. We have also the Supreme Judicial Court of Oklahoma to the effect that the laws of Oklahoma are inoperative as to this question, of minority that Congress alone can legislate upon it and Congress having legislated, its express word is the supreme law. We have also the logical deduction that Congress when it so clearly defined the meaning of the word "minor" as used everywhere in the act, intended Indian minors should be protected in their estates and property by the probate courts of Oklahoma, until those minors had arrived at the age fixed by Congress in the act itself; and this was done by Congress advisedly to the end that the estates of minor Indians should not be dissipated by them under the provisions of the State Act of March 5, 1895, or any similar statute of Oklahoma empowering them to transact business before the time which Congress deemed advisable and for their good. Opposed to all this our opponents have nothing.

Appellants contend that Section 4, of the Act of May 27, 1908, is the pivot in this case. We will conclude our brief on this question in an analysis of their argument.

The general observation is made by the Appellants that the primary purpose of the Act of May 27, 1908, was to provide for the taxation of lands, in that part of Oklahoma, which was formerly the Indian Territory. This is a new theory relative to the principle of Indian legislation. We were, and still are of the impression that the primary and only object of Indian legislation enacted by the National Government was and is for the general welfare and good of the Indian. If that is not so then the position that the Government has assumed, as guardian of the Indian people, and which has been impressed upon us in numerous decisions, by this and inferior courts, is one of misplaced confidence and trust. We do not believe it was the primary purpose of the Act of May 27, 1908, to aid or assist the state of Oklahoma, but we believe it was the intention of this Act referring now to section four, to acquaint the Indian with the responsibility involved with the ownership of property, that is, the contribution to government in return for protection afforded. But even this laudible desire of the Government, if that was its intention, in removing restrictions, was as will hereafter appear, beyond its jurisdiction.

Appellant's assuming that the lands belonging to those Indians of the class to which Goodman belonged, being removed from restrictions, became under section *four* of the Act of May 27, 1908, subject to taxation, and being subject to taxation, could be sold for the non-payment of taxes, and

hence could be alienated without the approval of the probate court.

No distinction is made by appellant's between voluntary or involuntary alienation. Then this deduction is made by them that the lands being subject to involuntary sale for taxes, independent of the probate courts, it must necessarily follow that the probate courts have not exclusive jurisdiction being deprived of their exclusive jurisdiction by a general law of the State, that is the operation of that general law of the State, which permits land to be sold for the non-payment of taxes, independent, and without regard to the jurisdiction of the probate courts, over the person or property of the owner of the land. Then they argue that *any other* general law of the state, which according to its provisions, operates to deprive the probate courts of jurisdiction over the estates of minors, must be given a like effect, and that the general law of the State of Oklahoma, granting to the district courts, power to confer majority rights, must therefore be accorded this effect.

Assuming for the sake of the argument only, that such lands as those allotted to Goodman, were subject to taxation, and assuming also for the purpose of argument, that the exclusive jurisdiction of the probate courts over a minor's *lands*, is superseded by the administration of a general law of the state, that is, the sale of land for the non-payment of taxes, yet it does not follow that every general law of the state that might operate to deprive the probate courts of their exclusive jurisdiction of Indian minors, and their estates, should be given a like effect; and, especially it does

not follow that the general law of the state empowering the district courts to confer majority rights, should be given such effect, because Congress by its enactment of the Act of May 27, 1908, has deprived *that* general law of its effect, has deprived it of its power to disturb the exclusive jurisdiction of the probate courts of the State of Oklahoma, relative to minor Indian citizens, by declaring that these minors should remain minors, until they attain the age of majority as defined by the Act, thus emphasizing the fact that the restrictions thus imposed was a restriction that had to do with personal status as well as property rights.

The lands of minor Indians might be subject to *involuntary* alienation, and the exclusive jurisdiction of the probate courts, over the minor's lands be thus invaded so far as his property was concerned, but the exclusive jurisdiction of the probate courts, over his personal status would not in the least be impaired.

The argument of Appellants was the argument of the Appellants in the case of *Priddy* v. *Thompson, Supra,* and in the *Winkler case, Supra.*

In the *Priddy* case, the Appellants contended that the general law of the state, that is the Act of 1895, conferring upon the district courts of Indian Territory, the power to confer majority rights, operated on all minor citizens alike, and therefore, deprived the probate courts of their exclusive jurisdiction, but the Circuit Court of Appeals for the Eighth Circuit, answered this argument as we have heretofore noted, and held the general law inapplicable because of a specific statute enacted by Congress, which deprived this general law of its applicability to Indian minor citizens.

In the *Winkler* case, the Appellants argued that a general law of the state, *i. e.* the statute conferring upon married persons of whatever age, the right to contract and convey their property, irrespective of age, operated to divest the probate courts of their exclusive jurisdiction over Indian minors allottees, which was conferred upon the probate courts by the Congressional Act of May 27, 1908, but we have also seen what a conclusive answer the Supreme Court made to that argument, saying in effect that its (Oklahoma's) general law was inapplicable to Indian minor allottees, because of an Act of Congress, *i. e.* the Act of May 27, 1908, which deprived the general law of the state of its applicability.

In their argument on this question, Appellants again strike down the very distinction, which they have heretofore sought to maintain, *i. e.* disability which affects the personal status of the allottee, and a restriction on the alienation of land, hence, the importance of bearing in mind that the Act of May 27, 1908, dealt not only with restrictions on land, but also affected directly the personal status of the allottees. That Appellants ignore this distinction, is manifest when they say:

> "If this Court should hold that the lease of Appellants is valid, it can do so for one reason alone; that is, because Goodman's allotment was still subject to restrictions on alienation, which would prevent the operation of the ordinary laws of Oklahoma."

This conclusion is not a logical deduction from the provisions of the Act. On the contrary, this court, in our judgment, could affirm the decision of the lower court, and deny the validity of Appellant's lease, on the theory that the personal status of the allottee had been defined, and that his

personal status as thus defined by specific legislation of Congress could not be altered or changed by any general law of the State of Oklahoma. And again it does not follow that:

> "If the Goodman allotment is still subject to restrictions on alienation, that it and all other allotments of its class fall beyond the operation of section four, of this Act, in consequence of which all these lands will not be subject to taxation by the State of Oklahoma."

and this does not follow, not because the lands are subject to restrictions on alienation, but because a removal of restrictions would not necessarily subject them to taxation, for the reason that they were allotted or patented, with an express exemption, or under a general policy of exemption from taxation, which subsequent legislation, in the nature of removal of restrictions could not impair.

Choate et al. vs. Trapp, 224 U. S. 665,
56 L. Ed. 941.

English v. *Richardson*, 224 U. S. 680,
56 L. Ed., 949.

It is contended by Appellants that by section four of the Act of May 27, 1908, all restrictions were removed from Goodman's lands and that they therefore became subject to taxation, and consequently subject to involuntary alienation for the non-payment of taxes. In the *Choate* case it was contended that when restrictions against alienation were removed by the Act of May 27, 1908, the provision as to exemption from taxation, went as a necessary part thereof with the land. But this court refused to follow this contention, holding the lands exempt from taxation. We are not unmindful that the lands therein held exempt from taxation became vested in the Allotee under a provision, which pro-

vided in substance that all lands should be non-taxable, while the title remained in the original allottee, but not to exceed twenty-one years from the date of patent. But in the *English* case, the allotment sought to be taxed was that belonging to a Creek allottee, and by section 7 of the original Creek Agreement and by section 16 of the Supplemental Creek Agreement, the provisions relating to exemption from taxation, are practically identical with section 13 of the Cherokee Agreement, 32 Stat. L., 716, the agreement under which Goodman obtained his allotment. Yet in the *English* case the lands were held to be not subject to taxation, and the principle stated and applied in the *Choate* case were held to be identical, notwithstanding that there was a difference between the Atoka Agreement and the Creek Agreement, relative to exemption from taxation.

We conclude our argument with these general observations:

1. That all National legislation relative to the Indian has been enacted on the theory that the Government maintained a relation of guardianship over these people to whom it owed a duty to protect, and that all National legislation, relating to the Indians, has been enacted primarily for their good, and for no other.

2. That prior to the admission of Oklahoma into the Union, the sole and exclusive control and dominion over these people, was vested in the Federal Government, and

it could therefore make any law or regulation respecting these people and their property as in its judgment it deemed best.

3. That the conferring of citizenship did not make incompatable the Government's control over these inferior peoples and their property.

4. That by the terms of the Enabling Act, Congress reserved to itself the right and authority which it had formerly maintained, that is, the right to pass any law or regulation, affecting the Indians, their lands, property or other rights, as if the Enabling Act had never been passed. And in this connection, we call the Court's attention to the exact wording of the first section of the Enabling Act, and note that Congress reserves to itself not only the right to pass any law affecting the Indians and their lands, but also *their property* and *other rights.*

5. That at the time of the approval of the Act of May 27, 1908, the exclusive power and control over these Indian peoples, and their lands, reposing in Congress, and in no other legislative body, it defined in said Act the period of minority of its minor Indian citizens and delegated to the probate courts of the state, jurisdiction over them and their property.

6. That the exclusive right and authority being vested in Congress at the time of the aprpoval of the Act of May 27, 1908, wherein the personal status of these allottees was defined, that legislation had the force and effect of a specific statute, which made inapplicable any general law of the State of Oklahoma, upon the same subject.

It is contended by appellants that Goodman being one eighth degree Indian blood, all restrictions over his allotment were removed by virtue of section one, of the Act of May 27, 1908, and his allotment being freed from restrictions became subject to all the laws of the state of Oklahoma, and especially that general law of Oklahoma, that permitted the lands to be taxed, and that general law of Oklahoma which permitted majority rights to be conferred upon minor citizens.

The word restrictions as used by Appellants therefore, is used by them, in a most comprehensive sense. Thus they make no distinction between a restraint on alienation by reason of Governmental control or regulation, and a restraint by reason of disability of minority.

We contend that all that was meant by removal of restrictions in section one, was the removal of Governmental control, and that Congress did not, by the Act of May 27, 1908, intend that the allotments of the class belonging to Goodman should not be encumbered with those impediments to voluntary alienation that necessarily apply by reason of the restricted status of the owner of the land, that is minority. That by virtue of sections two and six, Congress intended that the person and property of minor allottees should be subject to the jurisdiction of the probate courts, and defined those minors whether restrictions had been removed from their lands or not, (using the term restrictions in the sense that we have used it) to be, in case of males, until they attain the age of twenty-one years, and in the case of females until they attain the age of eighteen years, and this

is manifest because the language is "the term minor or minors, as used in this *Act.*"

Thus consolidating sections one, two, six and four, we submit the following to be the logical deduction and interpretation of the Act of May 27, 1908, in so far as it pertains to the questions raised in this case:

1. That all restrictions so far as Governmental control is concerned, were removed.

2. That the term minor as used in the entire act, which would include minors whose lands were still subject to Governmental regulation, as well as minors whose lands were not subject to Governmental regulation, should include males until they attain the age of twenty-one years, and females until they attain the age of eighteen years; and minors being thus defined:

3. Their person and their property should be subject to the jurisdiction of the probate courts of the state and to the exclusive jurisdiction of those courts, because if otherwise intended, Congress would have said, "shall be subject to the laws or courts of Oklahoma."

4. This does not make inconsistent the operation of section four, because subjecting these allotments to taxation, if no other statute prevented these lands being subject to taxation, was not incompatable with the ownership of property by any minor, whether Indian or white citizen, and not inconsistent with the exercise of exclusive jurisdiction by the probate courts over their person and their property.

5. But, that the attempt to confer contractional rights on these minor citizens, by the operation of a general law of the state, would be to alter the personal status of these people as by Congress defined, and therefore void, because in conflict with *Act of May* 27, 1908.

The Court is advised by Appellants that there is no great question of policy present in this case. With this statement, we cannot agree. We believe there is. If the policy of the Government in its dealings with its dependent wards, is to be preserved, then the decision of the lower court must be affirmed. Else we venture the prediction that on the morrow, hundreds of immature, illiterate Indian minor citizens, through alleged friends, will be petitioning the various district courts of the State of Oklahoma, to confer upon them the rights of majority, with the result that their allotments will soon be dissipated, and the laudible purpose of the Government to acquaint them with the privileges and responsibilities of property rights will be destroyed. Nor can we agree with Appellants, that there can be no substantial distinction between the sales of lands, belonging to these minors through a probate court of Oklahoma, and according to the laws of Oklahoma, and a sale made by a minor himself, after the District Courts have conferred rights of majority upon him. In our judgment there can be, and is as a matter of fact, a great distinction. No legislative authority or judicial tribunal is to protect such a minor, after he has walked from the court, clothed with the power of contract, whenever he may fall into the clutches of scheming speculators, but on the other hand, a sale of

his property administered through the jurisdiction of the probate courts, is surrounded with all possible means of protection. Additional bond is required of his guardian, the land can be sold only for certain specified purposes, thus affording to the transaction, ever avenue of safety and conservatism.

And again we disagree with the Appellants when they say that this court is called upon to decide one single question, that is whether or not restrictions were removed from the allotments of the class of which Goodman owned, for this ignores entirely the question of the restricted personal status of the allottee; and his lands, as we have heretofore noted, could be removed from restrictions, and still be exempt from taxation, so long as they remain in the allottee for the designated period.

We confidently submit, therefore, that the Oklahoma Act of 1895, is inoperative, and invalid so far as Indian minors are concerned, because it is not the Supreme Law on such matters, that Congress is omnipotent so far as its Indian minors are concerned, and Congress has distinctly said that an Indian male minor, should remain such until twenty-one years of age, and an Indian female minor until she is eighteen years of age.

The Act, therefore, of a district court, in attempting to remove the disability of Robert F. Goodman, before the time fixed by Congress was wholly inoperative and produced no effect. He still remained a minor, notwithstanding the attempt to confer contractional rights upon him, and therefore his act in selling his land, or making the lease to the Appellants, was wholly invalid and of no effect.

II.

The fourth and ~~fifth~~ 6th assignment of error raise another proposition of law, which has not been discussed by Appellants, and we are advised that they intend to confine their case to the first proposition as presented. But inasmuch as the question is presented by assignment of error, we do not deem it inappropriate to discuss briefly the proposition raised by these assignments of error.

The question presented by the fourth and sixth assignments of error, and which was contended for by the Appellants before the Circuit Court of Appeals, raise this question.

That by the provisions of the Act of July 1, 1902, 32 Stat. L. 716, restrictions were absolutely removed from Robert F. Goodman's surplus allotment on August 7, 1907; that no restrictions could be reimposed by the Act of May 27, 1908, and that therefore, a decree of the District Court of Washington County, removing his disability and confering contractional rights upon him, insofar at least as his surplus allotment was concerned, was valid.

Our statement of this proposition is as follows:

That by provisions of the Act of July 1, 1902, 32 Stat. L. 716, restrictions were not absolutely removed from Robert F. Goodman's surplus allotment, *until the expiration of five*

years from the date of his allotment deed, to-wit, at the expiration of five years from the 31st day of March, 1909, being the date of his allotment deed. That within that period, to-wit, May 27, 1908, Congress extended over Goodman, and his allotment, a modified restriction by declaring that he and his property (including his allotment) should be under the exclusive jurisdiction of the probate courts of the State of Oklahoma, so long as he was a minor, and defined the period of his minority specifically in that Act, by declaring that he should remain a minor until he had attained the age of 21 years. We thus make a marked distinction between a restriction reimposed and a restriction continued during the continuance of a restriction then existing.

The right of Congress to extend an existing restriction was affirmed by this Court in the case of *Tiger* v. *Western Investment Co.*, 221 U. S. 286; 55 L. Ed. 738, and again reaffirmed by this Court in the case of *Heckman* v. *United States*, 224 U. S. 413; 56 L. Ed. 820, affirming United States v. *Allen*, 171 Fed. 907;

In the *Heckman* case this Court said:

> "The power of Congress thus to extend the restriction upon alienation was sustained by this court in *Tiger* v. *Western Investment Co.*, 221 U. S. 286, 55 L. Ed., 738, 31 Sup. Ct. Rep., 578. There the question related to a conveyance of inherited lands, made by a Creek Indian of the full blood, without the approval of the Secretary of Interior, as required by paragraph 22 of the Act of 1906. The conveyance had been executed after the expiration of the five year limitation upon alienation, prescribed by the supplemental agreement with the Creek Nation (Act of June 30, 1902, Chap. 1323, paragraph 16, 32 Stat. at L. 503); but meanwhile,

and during the continuance of the original restriction, the Act of 1906 has been enacted. It was held that the restriction of the later statute was valid."

"The reasoning of this decision is conclusive as to the validity of the extension by paragraph 19 of the act of 1906, of the period of inalienability of lands allotted, as in this case, to full-blood Cherokees. *And the same principle governs the restrictions provided by the Act of May* 27, 1908, Chap. 199, 35 Stat. at L. 312."

We are not unmindful of the decision of this Court rendered at this term in the case of *United States v.* Bartlett, *et al.*, decided November 16, 1914. But that decision has no application to the question herein presented because in that case it was undisputed that under section 16, of the Creek Supplemental Agreement, restrictions absolutely expired at the expiration of five years from the date of the agreement of June 30, 1902, and therefore the Act of 1908, could not reimpose a restriction. But the question here presented is that restrictions under the Cherokee agreement did not expire until the expiration of five years from the date of patent, and therefore the act of May 27, 1908, being enacted before the expiration of that time, did not reimpose a restriction, but extended a modified restriction during the existence of a restriction which was in full force and effect at the time of the approval of the Act.

We assume therefore, that these decisions eliminate the necessity of a further discussion relative to the power of Congress to extend a restriction during the continuance of an existing restriction. This brings us therefore, logically to a consideration of the question involved in the third proposition in this case. If the restrictions over Good-

man's surplus allotment did not expire until the expiration of five years, from the date of his allotment deed, then Congress had the power to extend by the Act of May 27, 1908, a restriction over his person and his property, by declaring as it did in this Act, that his person and his property, so long as he remained a minor, should be under the exclusive jurisdiction of the probate courts of the state, and defining as it did the age at which his minority should terminate. Our contention being that the restrictions imposed by the Act of 1902, over Goodman's surplus allotment did not expire until the expiration of five years, from the date of his surplus deed. Our opponents maintained that all restrictions over the personal status of Robert Goodman, and his surplus allotment, expired by limitation on the 7th day of August, 1907. Sections 13, 14 and 15, of the Act of July 1, 1902, being the sections that must be construed in determining this question read as follows:

> "Section 13. Each member of said tribe, shall at the time of the selection of his allotment, designate as a homestead out of said allotment, land equal in value to forty acres of the average allotable lands of the Cherokee Nation, as nearly as may be, which shall be inalienable during the life time of the allottee, not exceeding twenty-one years from the date of the certificate of allotment."
>
> "Section 14. Lands allotted to citzens shall not, in any manner, whatever, or at any time, be encumbered, taken, or sold to secure or satisfy any debt or obligation, or be alienated by the allottee or his heirs, before the expiration of five years from the date of the ratification of this act."
>
> "Section 15. All lands allotted to the members of said Tribe, except such land as is set aside to each for

a homestead, as herein provided, shall be alienable in five years after issuance of patent."

Launching into the discussion of this subject, it was the contention of Appellants that;

> "In order that a restriction on alienation may exist even with respect to Indian lands, the doctrine is well settled that the restriction must be affirmatively imposed by the Act of Congress or by the treaty, providing for the allotment of the lands in question."

Citing as authorities—

Doe v. *Wilson*, 23 Howard, 457;
James v. *Meehan*, 175 U. S. 1.

Appellants cited these authorities in support of their theory by contending that section 14, is the affirmative statute. We could equally adopt these authorities as supporting our theory but insist that section 15, is the affirmative statute, and that section 14, is the negative. But right here it must be noted that neither in section 14 or 15, was Congress seeking to impose a restriction. The restrictions had been imposed. In these particular sections Congress was then dealing with the matter of vesting title to the Tribal lands in the individual members of the tribe, and we repeat therefore that it is section 15, and not section 14, that affirmatively seeks to carry out this intent. It becomes necessary, therefore, to examine these sections, but before doing so, let us approach the Cherokee treaty.

Theretofore the land of the tribe had been held by the tribe as a unit. By this act, the same was segregated and allotments made to the individual members. This was something of an experiment with the Government, and its officers were undoubtedly anxious to acquaint each member with the

character, quantity and value of this allotment. The work of the enrollment and allotment was slow and would extend over a term of years, and if the Indians were permitted to sell their lands within five years of the ratification of the treaty, some of them would be in position to sell long before they received their allotments and the very laudible desire of the Government to acquaint them with the character and value of their allotted lands would not be realized. It will be noticed therefore, that Congress did not declare affirmatively in section fourteen, that they could alienate their lands upon the expiration of five years, from the ratification of the treaty. The section is not affirmative but *negative*. It declares none of the lands shall be sold before the expiration of five years from the ratification. This is a protection clause naming a period within which in no event, shall the lands be sold. It does *not* declare that upon the expiration of such period, such lands may be sold. It is *not* an affirmative provision at all, but a strictly *negative one*.

Section 15 is an entirely different provision. It is an *affirmative* statute. It directs that after five years from the issuance of the patient, the lands shall be *alienable*. This section is in keeping with the policy of the government, for after an Indian had receivd his allotment, he was compelled to hold it five years and learn its value before he could dispose of it.

The two sections are easily construed together, and do not in any way conflict with each other. After five years from the date of his deed of allotment, the Indian may sell his lands; but in no event can he sell within five years from the date of the treaty.

But what are the rules that govern in the construction of statutes, once there is a seeming conflict. It is best laid down in the case of:

Washington Market Co. v. *Hoffman*, 101 U. S., 112; where Mr. Justice Strong expresses it thus:

> "We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. As early as in *Bacon's Abridgement*, section 2, it was said that "A statute ought, upon the whole to be so construed that, if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant." This rule has been repeated innumerable times. Another rule, equally recognized, is, that every part of a statute must be construed in connection with the whole so as to make all parts harmonize, if possible, and give meaning to each."

and if there is an inevitable conflict between the two sections and they cannot stand together, and one of them must fall, which goes down? The fifteenth? No. The *fourteenth*. The rule is well stated by the Seventh Circuit Court of Appeals, in the case of *in re Richards*, 96 Fed. 935, where Jenkins, Circuit Judge, in delivering the opinion of the court, said:

> "We are unable to reconcile these provisions. They are broadly and clearly in antagonism. It is not a question, therefore, how they may be reconciled, for that is impossible. The question is, which shall prevail? The rule in such cases is stated by Puffendorf. (Potter, Dwar. St. Ed. 1871, p. 132):
>
> "When we meet with the seeming repugnancy in the terms, conjectures are necessary to work out the genuine sense, by reconciling it, if it is possible, to those terms that seem to be repugnant. But if there be a

clear, evident repugnancy, the latter vacates the former. This rule applies to the making of laws, wills and contracts."

This ancient rule of Puffendorf has been applied in modern cases. The rule was applied in:

Hall v. *Equator Mining and Smelting Co.*, et al. 11 Federal Cases 222, No. 5,931;

by Hallett, District Judge, who said:

"So far this section is in conflict with section 2322, before mentioned, and the matter of precedence between them is settled by an arbitrary rule established long ago. As between conflicting statutes the latest date will prevail, so between conflicting sections, of the same statute, the last in order of arrangement will control. The presumption that one section of a statute was adopted before another, seems to be very slight, and perhaps this rule has no other merit than to afford the means of solving a difficult question. But the rule appears to be well established."

It was applied again in *Howard* v. *Bangor, etc. Co.*, 86 Me., 387, where Peters, Chief Justice, said:

"But the rule of interpretation which governs in cases generally where any doubt or uncertainty exists is that the last words control all preceding words for the purpose of correcting any inconsistency of construction. The authors are agreed on this subject."

It was applied also in *ex parte Hewlett*, 22 Nev., 333, where in a case involving an interpretation of the game and fish laws of the state, Mr. Chief Justice Bigelow, said:

"It is also said that the section is so insensible and self contradictory as to when trout may be taken in the lakes of the state that it is impossible to determine the meaning of the legislature, and that, consequently, the whole section is a nullity. It must be admitted that in

this, as in most other matters, the act is not a model of careful legislation, as it contains in its single section three different provisions concerning lake trout. But the principle that where there is a conflict in the same act the provision which is latest in position repeals the others would probably apply."

And in *Quick* v. *Whitewater Township*, 7 Ind., 570, the Court, through Perkins J., applied the rule to conflicting sections of the state constitution, saying:

> "And, should the point, heretofore, briefly alluded to now be pressed, that the law violates that section of the constitution requiring laws to be uniform on this subject, a point on which we intimate no opinion, it will be a sufficient answer to say that that section is, locally and in time, anterior to the sections of the educational article in that instrument above epitomized, and, hence if irreconcilable with, is so far abrogated by them. If the different sections cannot be "liquidated" and made to stand together, it is a "rule of construction, not derived from positive law, but from the nature and reason of the thing, 'as consonant to truth and propriety,' that the last in order of time shall be preferred to the first."

And in *Brown* v. *County Commissioners*, 21 Pa. 37, where the rule is thus concisely stated by Mr. Chief Justice Black:

> "When two statutes are so flatly repugnant that both cannot be executed, and we are obliged to choose between them, the latter is always deemed a repeal of the earlier. *This same rule applies with equal force to a case of absolute and irreconcilable conflict between different sections or part of the same statute. The last words stand, and others which cannot stand with them go to the ground.*"

This learned Chief Justice had shortly before in *Packer* v. *Sumbury & Erie Railroad Company*, 19 Pa., 211, expressed the same rule, yet more concisely:

> "The rule, in cases of irreconcilable repugnancy, is to let the last part and not the first determine the meaning of the lawgiver."

The rule was also applied in *Albertson* v. *State*, 9 Neb. 429, where Mr. Chief Justice Maxwell said:

> "Again, the revised statutes of 1866 were passed as one act, and in such case the well known rule applies, that where there is an irreconcilable conflict between different sections in parts of the same statute the last words stand, and those in conflict therewith are, so far as there is a conflict, repealed."

The syllabus of the case reads:

> "Where there is an irreconcilable conflict between different sections or parts of the same statute, the last words stand, and those in conflict therewith are repealed."

The Ninth Circuit Court of Appeals in *United States* v. *Jackson*, 143 Fed. 783; through Howley, District Judge, quoted Puffendorf's rule, as we have heretofore given it, and declared the rule thus:

> "Another well settled rule of construction applicable of these cases is that, where there is an irreconcilable conflict between different parts of the same act, the last in the order of arrangement will control."

The Supreme Court of Alabama in *Hand* v. *Stapleton*, 135 Ala., 156, declares the rule through Mr. Justice Tyson:

> "The rule is, as between conflicting sections of the same act, the last in the order of arrangement will control."

The rule was applied in *Harrington* v. *Robertson*, 10 Wend., 547, where Mr. Chief Justice Savage used this language:

> "Here is another example of the rule of construction of statutes: That the last provision shall prevail. The previous part of this section declares that the provisions of the title, "shall not impair the powers of the trustee of any village specially authorized by law to grant licenses to sell strong or spirituous liquors;" and then follows the words, 'but such powers shall be exercised in the manner herein prescribed.' That matter is a total prohibition. Now it so happens that the only power which the trustees of Rochester had in granting licenses, was a power to license grocers to sell liquor to be drank in the building in which their groceries were kept. The first part of the section in question says, this power shall not be impaired; while the latter part says that the license shall contain an express declaration that it shall not be deemed to authorize such sale of any liquor or wine to be drank in the house, shop, outhouse, yard or garden of the person receiving such license. Suppose such a license to be drawn out in form, would it not be nullity? If I may be allowed the expression, it would be a *felo de se;* it would destroy itself; it would be an absurdity. *To avoid such an absurdity the rules of construction apply; the latter part of the section prevails, and repeals that which precedes, and is repugnant.*"

To the same effect is *Westport* v. *Jackson*, 69 Mo. App., 488, where Smith, P. J., said:

> "It must be conceded that if there is an irreconcilable conflict between these provisions of the sections, that the last would stand and the others, which cannot stand with them, go to the ground."

Judge Endlich, in his work on the Interpretation of Statutes, section 183, says:

> "Where, in a statute, there are several clauses which prevent, as compared with each other, an irreconsilable conflict, the last one in order of date or local position must, in accordance with this rule, prevail, and the others be deemed abrogated to the extent of such repugnancy; *whether the conflicting causes be sections of the same act, or merely portions of the same sections.*"

The text in Sutherland's Statutory Construction (2d Ed.) section 349, reads:

> "Where one part of an act is in conflict with another, and they cannot be brought into harmony by any rule of construction; where they are of equal scope, and there is a point blank repugnancy, so that if it operates at all it will necessarily antagonize any effect of the other, what is the consequence? Both are void, by one neutralizing the other, on the ground that the legislature *unc flatu* have enacted a contradiction; or one, for being earlier or later in position must be deemed to render the other nugatory, or repeal it. *The decisions are to the effect that the provisions which is latest in position repeals the other.* Being later in position, the prevailing provision is deemed a later expression of the legislative will. The rule and reason for it have been criticised, because all the provisions of an act being adopted at the same time, there is no priority in point of time on account of their relative positions in the statute. This is strictly true; but, in the reading of a bill, matter near the close may be presumed to receive the last consideration,, and if assented to, is a later conclusion. Slight circumstances preponderate when a question is at equipose."

Before concluding this argument, we desire to call the Court's attention to the decision of the Supreme Court of Oklahoma, wherein that Court was called upon to construe

the sections of the Act of 1902. We believe the opinion of the Court in that case answers entirely the argument heretofore advanced by Appellants. We refer to the case of *Allen* v. *Oliver*, 121 Pac., 226; decided by the Supreme Court of Oklahoma, June 27, 1911. We observe from the official report that the honorable gentlemen, attorneys for Appellants here, were of counsel for the plaintiff in error in the Oklahoma case, and it must be presumed therefore that that Court had the benefit of their learned argument. That Court without a dissenting opinion, speaking through Justice Dunn, said:

> "There is but one question presented, which is: When, under the Cherokee agreement, and act of Congress, approved July 1, 1902 (32 Stat. 716, c. 1375), and voted upon and accepted by the Cherokee Tribe of Indians on the 7th day of August, 1902, may a member of said tribe of Indians lawfully alienate the surplus lands included within his allotment? This requires a consideration of sections 14 and 15 of the said act, which read as follows: (The court then quotes sections 14 and 15, as we have given them). * * * *
>
> It is a fundamental canon of construction that no word, sentence, or section of an act shall be rejected if, on any reasonable hypothesis, it can be given a field within which to operate. If this were not the rule, and we were permitted to entirely reject section 15, our difficulties would be entirely relieved; or if, when the apparent policy and purposes of the act are taken into consideration, it could be assumed that restrictions were intended, and we were relieved of considering section 14, the same result would follow. The sole duty of a court in construing legislation is to ascertain from the language used, when possible, the the legislative intent; but where obscurity exists it is often essential, in order to ascertain the particular intent of the legislature, to call to the aid of the court some degree of implication or, as was said be Chief

Justice Marshall, in the case of *Durousseau* v. *United States*, 6 *Cranch*, 307, 314 3 L. Ed. 232, quoted approvingly in the case of the *Paquete Habana*, 175 U. S. 677, 20 Sup. Ct., 290 44 L. Ed., 320: "The spirit, as well as the letter of a statute must be respected; and where the whole contexts of the law demonstrates a particular intent in the legislature to effect a certain object some degree of implication may be called in to aid that intent."

And, in order to interpret an uncertain or obscure statute aright, courts must view the subject of legislation from the position occupied by those who have written it, and ascertain the legislative intent from the general purposes of the act. This thought is expressed by Judge Nott, in the case of *Upton* v. *United States*, 19 Ct. Cl. 46, 49, as follows: "In this country, where statute law is the hurried work of overbusy individuals very little importance can be attached to accidents of phraseology. Every year of judicial experience renders plainer the fact that judges to interpret aright, must put themselves in the position of the legislators who make the statute, and gather from its general purposes the meaning of its obscurer parts."

In the case of *People ex rel Keeney* v. *City of Chicago*, 152 Ill., 546, 38 N. E. 744, from which this court quoted approvingly in the case of *Town of Eufaula* v. *Gibson et al.*, 22 Okla., 507, 518, 98 Pac. 565, 569, it is said: "A thing within the intention is regarded as within the statute, though not within the letter; and a thing within the letter is not with the statute, unless within the intention. *Perry County* v. *Jefferson County*, 94 Ill., 214; People v. Hoffman, 97 Ill., 234; *Anderson* v. *Chicago, Burlington & Quincy Railroad Co.*, 117 Ill., 26, 7 N. E. 129. The several provisions of the statute should be construed together in the light of the general objects and purposes of the enactment, and so as to give effect to the main intent, although particular provisions are thus construed not according to their literal reading.

Hill v. *Harding*, 93 Ill., 77; *Wabash, St. Louis & Pacific Railway Co.* v. *Binkert*, 106 Ill. 298. The intention is to be gathered from the necessity or reason of the enactment, and the meaning of words enlarged or restricted according to the true intent. *Casner* v. *Walrod*, 83 Ill., 171; 25 Am. Rep. 369; *Cruss* v. *Aden*, 127 Ill., 231, 20 N. E. 73, 3 L. R. A 327. That which is implied is as such a part of the statute as that which is expressed; *Potter's Dearris*, 145; *United States* v. *Babbitt*, 1 Black 55, 17 L. Ed. 94.

In this act, as in all of the others under which the lands of the tribes of the Indian Territory were allotted to them, provision is made against the power of immediate alienation on the part of the allottees. The reason for this was noted by this court in the case of *Hancock et al.* v. *Mutual Trust Co. et al.*, 24 Okla. 391, 103 Pac. 566, wherein it was said: "Recognition of the general inability of the individual members to at once successfully cope in a business way with many of the people among and surrounding them was taken by providing that all of those who were living, and who under the treaty personally took their allotments, were held, by virtue of the terms of the act, to be restricted in their right of alienation, and to take the land subject to this restriction. This condition and the reason for it are well stated in the case of *Jackson* v. *Thompson et al.*, 38 Wash. 282, 80 Pac., 454, wherein the supreme court of that state, speaking through Mr. Justice Dunbar, said: "The Indians are wards of the government. These arrangements and provisions in their interest and by their consent, as indicated in the solemn treaties executed. The government, from the necessities of the case, in consideration of the inexperience of the Indians, was compelled to insert these provisions in deeds which it issued to them to prevent them from becoming the prey of sharpers and speculators, who would, for an insufficient consideration, obtain their lands, the ultimate result being that the Indians would become pensioners upon the govern-

ment; and the mutual interests of the Indians and the government demanded some such regulations. And the same policy was likewise recognized by the Circuit Court of Appeals of the Eighth Circuit, in the case of *Beck* v. *Flournoy Live Stock & Real Estate Company*, 65 Fed. 30, 34, 12 C. C. A. 497, 501, wherein Justice Thayer who prepared the opinion for the court said: "These limitations upon the power of the Indians to sell or make contracts respecting land that might be set apart to them for the individual use and benefit were imposed to protect them from the greed and superior intelligence of the white man. Congress well knew that if these wards of the nation were placed in possession of real estate, and were given capacity to sell or lease the same, or to make contracts with white men with reference thereto, they would soon be deprived of their several holdings; and that, instead of adopting the customs and habits of civilized life and becoming self-supporting, they would speedily waste their substance, and very likely become paupers. The motive that actuated the lawmaker in depriving the Indians of the power of alienation is so obvious and the language of the statute in that behalf so plain, as to leave no room for doubt that Congress intended to put it beyond the power of white men to secure any interest whatsoever in lands stiuated within Indian reservations that might be allotted to Indians.'"

A correct interpretation of the purposes and meaning of section 15, taken in conjunction with the preceding section can be secured only by giving recognition to the policy expressed in the quoted portions which we have given above. This policy could not be enforced and carried out if the allotments made under the act were to have been alienable in five years after the date of its ratification. None were made of that date, and many of them not until a much later date, and some, doubtless, were not made until after the expiration of the five years provided for in section 14. Under these circumstances, it is clear that section 14 would fail in

providing the necessary period of protection which Congress has uniformly deemed necessary in parceling the lands among the members of these tribes; and there is absolutely no reason to conclude that a different policy was intended.

Attorney General Bonaparte, on being called on by the Secretary of the Interior for his construction of these sections of the act, recognizes and predicates, in a measure, his opinion upon this reasoning. He says (opinions of Attorneys General. vol. 26, pp. 351, 354): "As the purpose of the five year restriction upon alienation presumably was to keep the allottee in possession of his allotment for that length of time, so that he might acquire a knowledge of its value and uses, and be better fitted to dispose of it, such purpose might be impaired, and perhaps, altogether defeated if the date from which the restrictive period was to commence were held to be that of the ratification of the act, as many members might not have received their allotments until long after the ratification of the act, and in some cases not until after the expiration of five years from that time."

It is true that in section 15 there is no language affirmatively fixing restrictions and making inalienable the lands of these allottees; *but the subject-matter with which Congress was dealing and the matter then before it was that of vesting titles to land in the members of the tribe, and of fixing the time within which they could not part with it.* And when Congress said that "all lands allotted to the members of said tribe except * * * * homesteads * * * shall be alienable in five years after issuance of patent," it said, under the doctrine of *"Expressio unius est exclusio alterius."* (*Betts* v. *Com'rs of the Land Office*, 27 Okla., 64, 69, 110 Pac. 766, 768), that such lands would not be alienable prior to that time: the word "in", as used in the phrase "alienable in five years," being used as an equiv-

> alent to "at the expiration of." This meaning was given to the same word, as used in a substantially similar way, in the case of *Allentown School District* v. *Derr*, 115 Pa. 439, 9 Alt. 55. * * * *
>
> So considering the whole context of the law and the general policy of Congress as manifested in similar laws, we deem it to have been the particular intent in this case to make the lands with which they were then dealing inalienable for the full period of five years in the hands of the allottees; and while its meaning was, perhaps, inartistically expressed, still section 15 carries with it a clear implication that it existed and so finding the judgment of the trial court is affirmed."

In the decisions of the Supreme Court just quoted reference was made to the opinion of the Attorney General on this question. On August 20, 1907, Attorney General Bonaparte, rendered a written opinion to the Secretary of the Interior, holding the opinion for which we are contending.

It is reported in Twenty-six Opinions of Attorney General, 351, and for the convenience of the Court, we attach a copy of the opinion to this Brief.

We believe that it must be held beyond the peradventure of a doubt that the act of 1902, did not accord to Robert F. Goodman, the right to alienate his property on the 12th day of October, 1909; that by the Act of May 27, 1908, his person and his lands became subject to the exclusive jurisdiction of the Probate Courts of the State of Oklahoma, and by that act he was to remain a minor until he attained the age of twenty-one years.

That the decree attempting to confer rights of majority upon him was therefore void, and the alienation of his prop-

erty made without the authority of the Probate Court was void.

The lease to the Trusketts, and the deed to Canary, are invalid, and we respectfully submit therefore that the decree of th lower court should be affirmed.

EUGENE MACKEY,
T. H. STANFORD,
G. T. STANFORD,
Attorneys for Appellee.

JOHN H. BRENNAN, *of Counsel.*

Independence, Kansas, January 9, 1915.

SUPPLEMENT.

DEPARTMENT OF JUSTICE.

WASHINGTON.

August 20, 1907.

The Secretary of the Interior.

Sir: By your letter of August 6, 1907, you request my opinion upon the following questions arising in the administration of your Department of the laws relating to the alienation of Cherokee lands in the Indian Territory:

1. Will citizens of the Cherokee Nation be lawfully entitled, under the Act of July 1, 1902, (32 Stat., 716) to alienate lands allotted to them except homesteads, after the expiration of five years from August 7, 1902, i. e. after the expiration of five years from the date of the ratification of said Act, or will such lands be alienable, in the case of each allottee, in five years after the issuance of patent to him?

2. To what extent, if any, is the right of alienation under said Act of July 1, 1902, affected by the provisions of the Act of April 21, 1904 (33 Stat., 189) relative to the removal of restrictions upon alienation from all citizens and the Act of April 26, 1906 (34 Stat., 137) relative to the alienation of lands allotted to full-blooded Indians?

The Act of July 1, 1902, (32 Stat., 716) providing for the allotment of the lands of the Cherokee Nation, contains the following provisions:

Sec. 13. Each member of said tribe shall, at the time of the selection of his allotment, designate as a homestead out of said allotment land equal in value

to forty acres of the average allotable lands of the Cherokee Nation, as nearly as may be, which shall be inalienable during the life time of the allottee, not exceeding twenty-one years from the date of the certificate of allotment. Separate certificate shall issue for said homestead. During the time said homestead is held by the allottee the same shall be non-taxable and shall not be liable for any debt contracted by the owner thereof while so held by him.

Sec. 14. Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken or sold to secure or satisfy any debt or obligation, or be alienated by the allottee or his heirs, before the expiration of five years from the date of ratification of this Act.

Sec. 15. All lands allotted to the members of said tribe, except such land as is set aside to each for a homestead as herein provided, shall be alienable in five years after issuance of patent.

The Indian Appropriation Act of July 21, 1904 (33 Stat., 189, 204), provided:

* * * And all the restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes of Indians who are not of Indian blood, except minors, are, except as to homesteads, hereby removed, and all restrictions upon the alienation of all other allottees of said tribes, except minors, and except as to homesteads may, with the approval of the Secretary of the Interior be removed under such rules and regulations as the Secretary of the interior may prescribe, upon application to the United States Indian Agent at the Union Agency in charge of the Five Civilized Tribes, if said agent is satisfied upon a full investigation of each individual case that such removal of restriction is for the best interest of said allottee.

The Act of April 26, 1906 (34 Stat., 137, 144) pro-

viding for the final disposition of the affairs of the five civilized tribes, provides:

> Sec. 19. That no full blood Indian of the Choctaw, Chickasaw, Cherokee, Creek or Seminole tribes shall have power to alienate, sell, dispose of, or encumber in any manner any of the lands alloted to him for a period of twenty-five years from and after the passage and approval of this Act, unless such restrictions shall, prior to the expiration of said period, be removed by Act of Congress; and for all purposes the quantum of Indian blood possessed by any member of said tribes shall be determined by the rolls of citizens of said tribes aprpoved by the Secretary of the Interior: *Provided however*, that such full-blood Indians of any of said tribes may lease any lands other than homesteads for more than one year under such rules and regulations as may be prescribed by the Secretary of the Interior; and in case of the inability of any full-blood owner of a homestead, on account of infirmity or age, to work or farm his homestead, the Secretary of the Interior, upon proof, of such inability, may authorize the leasing of such homestead under such rules and regulations. * * * *

1. In regard to your first inquiry, I think the clear and specific statement in Section 15 of the Act of July 1, 1902, that "all lands allotted to the members of said tribe, except such lands as is set aside to each for a homestead as herein provided, shall be alienable in five years after issuance of patent," should be taken as making definite and certain the interpretation to be given the negative expression in the previous section that such lands should not, among other things, "be alienated by the allottee or his heirs, before the expiration of five years from the date of the ratification of this Act." As the purpose of the five-year restriction

upon the alienation presumably was to keep the allottee in possession of his allotment for that length of time, so that he might acquire a knowledge of its value and uses and be better fitted to dispose of it, such purpose might be impaired and perhaps altogether defeated if the date from which the restrictive period was to commence were held to be that of the ratification of the Act, as many members might not have received their allotment until long after the ratification of the Act and in some cases not until after the expiration of five years from that time. It will be observed that by section 13 the time when homesteads were to become alienable was fixed at "not exceeding twenty-one years from the date of the certificate of allotment," upon the receipt of which certificate, by section 21 of the Act, the allottee became entitled to be put in possession of his allotment.

This view, it will be observed, satisfies the well settled rule "that every part of a statute must be construed in connection with the whole, so as to make all the parts harmonize, if possible, and give meaning to each."

Market Co. v. *Hoffman*, 101 U. S., 116;
Sedgwick on Stat. and Const. Law, 238;
Wilberforce's Statute Law, 111.

2. Your second question is as to the effect of the provision of the Act of April 21, 1904, in regard to the removal of restrictions upon alienation from all citizens, and that of the Act of April 26, 1906, relative to alienation of full-bloods, upon the right of alienation under the Act of July 1, 1902.

The construction of the statutes referred to seems perfectly clear. By the Act of April 21, 1904, all the restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes who are not of Indian blood, except minors, are, except as to homesteads, removed, and all restrictions upon the alienation of all other allottees of said tribes, except minors, and except as to homesteads, are authorized to be removed

upon certain conditions. The provisions of this Act authorizing the removal of restrictions, as well as the original five-year restrictions as to surplus lands and the twenty-one-year restrictions as to homestead, in the Act of July 1, 1902, were, however, superseded as to full bloods by the provisions of Section 19 of the Act of April 26, 1906, which forbids full-bloods to alienate, sell, dispose of, or encumber in any manner any of the lands allotted to them for a period of twenty-five years from and after the passage and approval of that Act, unless such restrictions shall, prior to the expiration of said period, be removed by Act of Congress, with the proviso as to leasing.

Respectfully,

CHARLES J. BONAPARTE,
Attorney General.

TRUSKETT *v.* CLOSSER.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 160. Argued January 28, 1915.—Decided February 23, 1915.

The qualification "except as otherwise specifically provided by law," as used in § 6 of the act of May 27, 1908, 35 Stat. 312, removing restrictions upon alienation of allotments to members of the Five Civilized Tribes, means Federal, not state, law.

The act of May 27, 1908, expressly provides that the Probate Courts of the State of Oklahoma shall have jurisdiction in regard to the disposition of property of minors of the Five Civilized Tribes and that such jurisdiction shall be subject to the rules and regulations to be promulgated by the Secretary of the Interior.

The fact that the laws of the Territory of Oklahoma gave power to the courts to confer upon minors the rights of majority, and that the Enabling Act continued such laws, did not preclude Congress from enacting the provisions of the act of May 27, 1908, in regard to the disposition of allotments of members of the Five Civilized Tribes who were minors. *Tiger* v. *Western Investment Co.*, 221 U. S. 286.

Courts in Oklahoma, both state and Federal, having found that the provisions of the act of May 27, 1908, in regard to disposition of allotments of minors of the Five Civilized Tribes dominated the provisions of state law in that respect, that construction has become a rule of property in the State, and this court would be disposed to adopt it as such even if it doubted the construction placed by those courts upon that act; and *held* that the title under a lease made by a minor's guardian pursuant thereto was superior to that under a lease made by the minor during minority but after removal of disabilities by the state court.

198 Fed. Rep. 835, affirmed.

THE facts, which involve the construction of the act of May 27, 1908, defining restrictions on alienation of allotments by members of the Five Civilized Tribes, and the validity of gas and mining leases made by a member of the Cherokee Tribe, are stated in the opinion.

Mr. James A. Veasey, with whom *Mr. Lloyd A. Rowland* was on the brief, for appellants:

The act of May 27, 1908, removed all restrictions against the alienation of allotments of mixed-blood Indians having less than half Indian blood, including minors; Goodman was a minor Cherokee Indian of less than half Indian blood, and, accordingly, all restrictions against the alienation of his land were removed by said act. See Oklahoma Enabling Act; § 2, Schedule Constitution Oklahoma; §§ 73, 74, 75, 733, Wilson's Digest; *Brown* v. *Wheelock* (Tex.), 12 S. W. Rep. 111; *Tiger* v. *West. Invest. Co.*, 221 U. S. 286; § 14, Cherokee Treaty, Act of July 1, 1902, 32 Stat. 716; *Bowling* v. *United States*, 233 U. S. 528; *United States* v. *Nichols Lumber Co.*, 234 U. S. 245; § 4, Original Creek Agreement, 31 Stat. 861; Act of April 21, 1904, 33 Stat. 189; § 22, Act of April 26, 1906, 34 Stat. 137. *Jefferson* v. *Winkler*, 26 Oklahoma, 653, distinguished.

Mr. G. T. Stanford and *Mr. Eugene Mackey*, with whom *Mr. T. H. Stanford* and *Mr. John H. Brennan* were on the brief, for appellee.

Mr. Justice McKenna delivered the opinion of the court.

Conflict of oil and gas mining leases derived from the same lessor, one Robert F. Goodman, a member of the Cherokee Tribe of Indians.

Appellee brought suit in the District Court for the Eastern District of Oklahoma to quiet title to his lease against that of appellants covering the same premises. The bill set up the full title of appellee and the full title of appellants, to which appellants demurred. The demurrer was overruled and, appellants declining to plead further a decree was entered quieting the title of appellee

and decreeing the cancellation of the lease of appellants. The decree was affirmed by the Circuit Court of Appeals, 198 Fed. Rep. 835.

The lands in controversy were part of the common domain of the Cherokee Tribe of Indians, and on March 31, 1909, were conveyed to Goodman, a member of the Tribe, by patent of the Cherokee Nation, duly approved by the Secretary of the Interior as his, Goodman's, allotment, fifty acres being his so-called "surplus" allotment and the remaining thirty acres being his homestead allotment.

Goodman was one-eighth Indian blood and seven-eighths white blood and did not attain the full age of twenty-one years until September 25, 1910. Before that date, to wit, on October 12, 1909, in a proceeding brought by his next friend, the District Court of Washington County, Oklahoma, by a decree duly entered, removed from Goodman the disability of minority and conferred upon him the rights of majority concerning contracts and "authorized and empowered him to transact business in general with the same effect as if such business were transacted by a person over the age of twenty-one years." In pursuance of this decree Goodman granted to one Overfield a lease for oil and gas mining purposes covering his entire allotment for the term of fifteen years from its date and as long thereafter as oil or gas should be found in paying quantities. The lease passed to appellants by assignment and constitutes the basis of their title.

On September 14, 1910, that is, subsequent to the decree conferring majority rights upon Goodman and subsequent to the lease under which appellants hold, the legal guardian of Goodman granted a lease in behalf of Goodman to appellee covering the same lands. This lease was both authorized and confirmed by the order of the County Court for Nowata County, Oklahoma, that court then having probate jurisdiction of the person and estate

of Goodman, and Goodman at that time being a minor. This lease is the ground of title of appellee.

The question in the case then is, Of the two leases which constitutes the better title? And a decision of this question, appellants contend, depends upon the construction of the act of Congress of May 27, 1908, c. 199, 35 Stat. 312, special stress being put upon §§ 1 and 4. These sections are as follows: "Section 1. That from and after sixty days from the date of this Act the status of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as regards restrictions on alienation or incumbrance, be as follows: All lands, including homesteads, of said allottees enrolled as intermarried whites, as freedmen, and as mixed-blood Indians having less than half Indian blood including minors shall be free from all restriction. All lands, except homesteads, of said allottees enrolled as mixed-blood Indians having half or more than half and less than three-quarters Indian blood shall be free from all restrictions. All homesteads of said allottees enrolled as mixed-blood Indians having half or more than half Indian blood, including minors of such degrees of blood, and all allotted lands of enrolled full-bloods, and enrolled mixed-bloods of three-quarters or more Indian blood, including minors of such degree of blood, shall not be subject to alienation, contract to sell, power of attorney, or any other incumbrance prior to April 26, 1931, except that the Secretary of the Interior may remove such restrictions, wholly or in part, under such rules and regulations concerning terms of sale and disposal of the proceeds for the benefit of the respective Indians as he may prescribe."

"Section 4. That all lands from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens as though it were the property of other persons than allottees of the Five Civilized Tribes: Provided, That allotted lands shall not be subjected or

held liable, to any form of personal claim, or demand, against the allottees arising or existing prior to the removal of restrictions, other than contracts heretofore expressly permitted by law."

At the time this act was passed Goodman was a minor of one-eighth Indian blood, and it is hence contended that Goodman having less than one-half Indian blood, his entire allotment was free from all restrictions and was therefore subject to the laws of Oklahoma. And this notwithstanding §§ 2 and 6 of the act, which read respectively as follows: "Section 2. That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be leased by the allottee if an adult, or by guardian or curator under order of the proper Probate Court if a minor or incompetent, for a period not to exceed five years, without the privilege of renewal: Provided, That leases of restricted lands for oil, gas or other mining purposes, leases of restricted homesteads for more than one year, and leases of restricted lands for periods of more than five years, may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior, and not otherwise: And Provided Further, that the jurisdiction of the Probate Courts of the State of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provisions, and the term minor or minors, as used in this Act, shall include all males under the age of twenty-one years and all females under the age of eighteen years.

"Section 6. That the persons and property of minor allottees of the Five Civilized Tribes shall, except as otherwise specifically provided by law, be subject to the jurisdiction of the probate courts of the State of Oklahoma. . . ."

These sections are circumstantial and contain the elements of decision. Section 2 defines minors, male and

female, and provides for the disposition of their property under, as stated, rules and regulations provided by the Secretary of the Interior and declares that the jurisdiction of the Probate Courts of the State shall be subject to its provisions. And § 6 declares to what courts the property of minors so defined shall be subject. Explicitly such property is made "subject to the jurisdiction of the probate courts of the State of Oklahoma." The qualification "except as otherwise specifically provided by law" means, as said by the Circuit Court of Appeals, "Federal law, not state law."

Counsel, however, resist that conclusion and contend that the jurisdiction which was made subject to the provisions of the section is yet to be regarded independently of them and subject to the provisions of the local statutes. The reasoning by which this is attempted to be supported is somewhat involved and is difficult to represent succinctly. It is that the enabling act of the State, except as modified, and the constitution of the State continued the laws in force in the Territory at the time of its admission into the Union until they expired or were altered or repealed, and that by those laws minors were defined (§ 733, Wilson's Digest) and other laws gave power to confer upon them the rights of majority. (Sections 73, 74 and 75, Wilson's Digest.) But this did not preclude the exercise of the power of Congress as exhibited in the act of May 27, 1908. *Tiger* v. *Western Investment Co.*, 221 U. S. 286. And the courts, both state and Federal, have found no difficulty in determining its meaning or its dominance over the provisions of the state law. *Priddy* v. *Thompson*, 204 Fed. Rep. 955; *Jefferson* v. *Winkler*, 26 Oklahoma, 653. And we think it is clear that sections 1 and 4 are not to be construed independently of the other sections of the act.

In *Jefferson* v. *Winkler* an Indian girl married when she was under eighteen, and while under that age conveyed

her allotment. It was held that under the general law of Oklahoma the marriage emancipated her but that, notwithstanding, her conveyance was void, the act of May 27, 1908, prevailing over the state law. The reasoning of the court is directly antagonistic to that of appellants in the case at bar, the same contentions being urged in that case as in this. In other words, it was contended that § 1 of that act was absolute and was not modified by § 2, and the court, considering all of the provisions of the act, was of opinion that the legislative intention was to provide that the allotted lands of freedmen and mixed-blood Indians of less than half Indian blood, under the age of eighteen if a female, and under the age of twenty-one if a male, might be sold under the supervision and jurisdiction of the probate courts of the State and not otherwise. The court, therefore, decided, upon a consideration of the act of May 27, 1908, and of the laws of the State, that the latter removing the disability of minority do not extend to Indian minors as defined by the act of Congress.

The decision has been followed in *Tirey* v. *Darneal*, 37 Oklahoma, 606. Also *Tirey* v. *Darneal*, 37 Oklahoma, 611.

The construction has become a rule of property in the State and we should be disposed to accept it as such, even if we had doubts of the construction of the act of May 27, 1908. *Reynolds* v. *Fewell*, *ante*, p. 58.

The other contentions of appellants which have been argued are but phases of those we have reviewed or are determined by the same considerations.

Decree affirmed.